

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN THE MATTER OF, Case No. 13-53846
Detroit, Michigan
CITY OF DETROIT, MI September 18, 2014
_____/ 8:30 a.m.

IN RE: CONTINUED TRIAL RE: OBJECTIONS TO CHAPTER 9 PLAN
BEFORE THE HONORABLE STEVEN W. RHODES
TRANSCRIPT ORDERED BY: ROBIN WYSOCKI

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16
17
18
19
20
21
22
23
24
25

INDEX

WITNESSES FOR
THE CITY:

DirectCrossRedirect

MICHAEL PLUMMER	7	39,59	61
ANNEMARIE ERICKSON	69	118	150
JOHN SATTER	165	194	246

EXHIBITS:

ID

ADM

CX466	Satter Report	254	254
CX657	Record Prices	22	23
CX658	Record Prices	24	25
CX662	Market Share of Sales	35	35
CX699	Museum System	110	111
CX700	Fragments of Lace	110	111
CX701	Textile Fragments	111	111
CX702	Picture of Van Gogh Painting	90	91
CX703	Picture of Murals	89	91
CX713	Images of Archives	156	156

(City's Exhibits 272, 273, 279, 282, 283, 284, 285, 288, 289, 290, 293, 295, 297, 300, 302, 308, 341, 343, 344, 350, 351, 352, 392, 393, 394, 437, 449, 543, and 704. FGIC's Exhibits 1893, 3085, 3086, 3108, 3128, 3163, 3215, 3224, 3239, 3243, 3263, 3265, 3270, 3273, 3278, 3282, 3285, 3286, 3302, 3310, 3313, 3314, and 3923, 301 were stipulated and admitted)

1 (Court in Session)

2 THE CLERK: All rise. Court is now in session. You
3 may be seated. Calling case number 13-53846, City of Detroit,
4 Michigan.

5 MR. CULLEN: May it please the Court, Thomas Cullen
6 for the city. First, I'd like to check, did you -- you did
7 receive the stipulation that the parties had worked on?

8 THE COURT: Yes. And I think we entered the order.

9 MR. CULLEN: Okay, good. Thank you very much. I'm
10 sorry.

11 THE COURT: That's okay.

12 MR. CULLEN: We had an additional discussion last
13 night about the subject of Mr. Buckfire. As the Court may
14 recall, Mr. Buckfire entered an expert report dealing with
15 four areas.

16 One of those the Court ruled out his testimony on best
17 interest and the other three areas are, access to capital and
18 exit financing, various DWD issues that may have become --
19 DWSD issues which may have become moot with the tender offer
20 which you -- the Court was informed of, and the interest rates
21 for certain classes.

22 On the exit financing issue, since the date of the
23 report, an exit financing deal has been reached and approved
24 by the city council. In light of that, I thought and we

25 discussed -- I discussed with Mr. Soto and Mr. Perez, the idea
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 4 of 256

1 that he should file a supplemental report addressing the exit
2 financing as it has been entered and how that affects his
3 opinion.

4 And they agreed with that and agreed that he could file a
5 supplemental report which took out the material he couldn't
6 testify about, and updated if you will, the other -- the other
7 areas and most particularly addressed the issue of the exit
8 financing and how that would -- how that would affect his --
9 and on access to capital and because the exit financing itself
10 is an important part of the city's financing going forward, we
11 thought it was best to address that in a -- in a fuller
12 fashion.

13 So accordingly, what we agreed to was, and check me if
14 I'm wrong, that he would file a new report within those
15 confines, not addressing any additional matters, or the
16 matters that the Court had -- had ruled out and be available
17 for a deposition on that. That would be -- there would be
18 some more documentation and we could have done that -- we
19 could have tried to do that on the fly today, but we thought
20 it was better and fairer to do it in the following way.

21 And that means with respect to schedule, that Mr.
22 Buckfire will not be put up today, and we will end with Mr. --
23 Mr. Satter whenever that comes. And I discussed that -- the
24 impact on the schedule, I think we're doing fairly well on

1 and brother Perez said that they wouldn't seek to have us
2 docked for the time if we ended early, but I -- I throw myself
3 on the mercy of the Court with respect to that.

4 THE COURT: Counsel.

5 MR. SOTO: We agree, Your Honor.

6 THE COURT: Any objection, sir?

7 MR. BRILLIANT: No objection, Your Honor.

8 THE COURT: Okay. That's fine with me.

9 MR. CULLEN: Thank you, Your Honor. I -- I received
10 a note from Mr. DeChiara for the UAW this morning saying that
11 they were still planning on the 30th as the UAW day. We're
12 still planning on the 30th, just wanted to inform the Court.

13 THE COURT: Okay. Okay, good. Thank you for
14 reminding me.

15 MS. GREEN: Jennifer Green on behalf of the
16 retirement systems. Just a small housekeeping matter related
17 to the UAW issue.

18 Cynthia Thomas has been called by the UAW. She's the
19 executive director for the retirement systems. She's also
20 being called by the COPS and by some of the individual
21 objectors. And I wondered rather than having her come three
22 times to Court to testify, if we could agree that perhaps she
23 be produced one day and everyone could do their questioning of
24 her on the same -- same day.

1 on behalf of the COPS. If that's more convenient for Ms.
2 Thomas, that's fine for us. She's, I guess, in effect a
3 hostile witness so we'll cross examine her.

4 THE COURT: Okay.

5 MR. WAGNER: But that's fine. The other question
6 was whether we needed to issue a trial subpoena. I would hope
7 we don't have to, that she'd just be made available without a
8 subpoena.

9 MS. GREEN: I believe that the UAW already issued a
10 trial subpoena which we have accepted service of and it's for
11 the 30th. So she will be here in person with that subpoena.

12 MR. WAGNER: Okay.

13 MS. GREEN: Thank you, Your Honor.

14 THE COURT: Okay. One second, please. Okay, let's
15 proceed.

16 MR. IRWIN: Good morning, Your Honor. Geoff Irwin,
17 Jones, Day for the City of Detroit. May I proceed?

18 THE COURT: Yes.

19 (WITNESS MICHAEL PLUMMER WAS PREVIOUSLY SWORN)

20 DIRECT EXAMINATION

21 BY MR. IRWIN:

22 Q Good morning, Mr. Plummer.

23 A Good morning.

24 Q Before we turn to our next topic, I do want to ask you a
25 few questions that relate to actually a question that was put

1 to you yesterday by the Court.

2 A Okay.

3 Q Relating to the -- the weighted average approach that you
4 employed with regard to the 57,000 pieces and the balance of
5 the DIA collection.

6 A Right.

7 Q Do you recall that testimony?

8 A I do.

9 Q Okay. Can you tell the Court how long you think it would
10 take to individually appraise 57,000 pieces?

11 A I think it would take somewhere between one and two
12 years.

13 Q Are you aware of any all museum valuations of the
14 magnitude of the type that we're talking about for the DIA?

15 A To the best of my knowledge there has never been anything
16 of this magnitude ever accomplished or approached.

17 Q Is there an established methodology, a valuation
18 methodology that you could have consulted and employed in this
19 case?

20 A No, because this is unprecedented.

21 Q And did you check -- did you review any literature to
22 confirm that conclusion?

23 A I know from my 30 years in the industry that nothing has
24 ever been done and that there is no precedent or procedure or
25 literature on such a case.

1 Q To the extent that the weighted average approach that you
2 employed in this case has any bias directionally --

3 A Right.

4 Q Where is that bias?

5 A That bias would be towards over valuing the works because
6 it is our feeling that the COD property on which the
7 estimation or weighted average was based was a higher quality
8 representation of the collection than is the core of the
9 collection under 750,000.

10 MR. IRWIN: Your Honor, before we move to our next
11 subject, I did wish to ask the Court to reconsider its ruling
12 really for two reasons. If will you indulge me to articulate
13 those.

14 The first is that the city does believe that it is a
15 reliable methodology based on a meaningful statistical
16 sampling that is in fact tied to the actual DIA collection.
17 The second reason is that this is not --

18 THE COURT: Well, but there was no analysis of that
19 sampling done to determine statistically the confidence level
20 of the result based on the -- the sample that was chosen. And
21 that's -- and that can be done.

22 MR. IRWIN: It -- it can be done. This witness is
23 not -- is not a statistician. There's --

24 THE COURT: Precisely, precisely.

25 MR. IRWIN: I understand that. But -- but --

1 THE COURT: That's why he's not able to testify as
2 to the reliability of the method he used.

3 MR. IRWIN: The sampling that he did use was not 270
4 pieces, it was 2,700 pieces. It was a very large sampling and
5 -- and the testimony that has been elicited from both Ms.
6 Fusco and -- and the witness is that these were strategic
7 purchases by the city at a point in time when they were likely
8 to be --

9 THE COURT: Right. But you're asking me infer that
10 as a result the weighted average method is reliable. I'm not
11 willing to make that inference.

12 MR. IRWIN: And -- and -- and the second point I
13 wish to --

14 THE COURT: It can be proven.

15 MR. IRWIN: I -- I --

16 THE COURT: And you just haven't done it.

17 MR. IRWIN: The only other point I would like to
18 add, Your Honor, is that this is not the only witness in the
19 case where we think this issue will come up. And the
20 distinguishing feature from the city's perspective is that --
21 and by the way the city would agree that it's an important
22 consideration because you think about the number of items on
23 the other side of this equation in this case, 57,000. But
24 likely to be tens of thousands.

1 collection with small differences in terms of which -- which
2 weighted average or average you use. So it is important.

3 The distinguishing feature for the city's analysis is
4 that it is in fact tied to a representative sampling of the
5 DIA collection and not some external considerations. And
6 that's why it is the city's view that this is the most
7 reliable approach if you are going to project across the
8 balance of the collection with a multiplier of this type.

9 And so again, it is the city's view that if a methodology
10 like this is reliable, this is the most reliable. And the
11 city is simply in a position where if -- if that is -- if that
12 is not the case, if this methodology is not acceptable and
13 doesn't do it, the city will be very eager to apply the same
14 standard to the testimony of other witnesses who will come
15 later in the case.

16 THE COURT: I can't deal with that now. All I can
17 tell you is that you have not established the reliability of
18 this method.

19 MR. SOTO: Your Honor, in response, we intend to
20 establish the reliability of ours.

21 THE COURT: Okay.

22 Q Mr. Plummer.

23 A Yes.

24 Q You made mention earlier in your testimony of certain
25 discount factors. Do you recall that testimony?

1 A I do, yes.

2 Q Okay. Did you have occasion to consider the real world
3 returns that might result from a sale of the pieces of art at
4 the DIA?

5 A I did, yes.

6 Q Okay. And how did you approach that -- that -- that set
7 of concerns?

8 A I considered different scenarios as it were. The first
9 scenario was what we might refer to as an immediate
10 liquidation.

11 THE COURT: As what, sir?

12 A An immediate liquidation.

13 THE COURT: All right. Keep your voice up for
14 everyone.

15 A Yes. And an immediate liquidation would be a -- an
16 instance where one might sell to -- very quickly to a one or
17 -- one buyer or a consortium of buyers and pass on to them the
18 risk and the returns that the institution might get if it sold
19 over a longer period of time. And it's a situation that
20 occurs in the art world from time to time. There are real
21 world examples of this.

22 Q Can you give some of those examples?

23 A Yes. There was a case in 1990 with the Pierre Matisse
24 Gallery. Pierre Matisse was a dealer. He was -- the artist

25 Henri Matisse's son. And he was a dealer in school of Paris
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 12 of 256

1 paintings basically Picasso Matisse.

2 And he had an inventory of thousands of items all in the
3 same category. It was at a period of time when the art market
4 was sort of on the precipice of -- of bust. And it was too
5 many works of art to be sold at a -- at auction in one season
6 or even two seasons.

7 But the family needed to pay the estate taxes within a
8 period of time. So the family made a deal with the dealer
9 Bill Acquavella and with Sotheby's to sell the entire
10 collection for a hundred some million dollars, \$130,000,000, I
11 believe, and Sotheby's then with -- in partnership with Bill
12 Acquavella, sold it over a period of multiple years.

13 And at the end of the day Sotheby's had a return of about
14 45% over the purchase price and still had property to be sold
15 but they stopped reporting it on their returns.

16 Q And so what conclusions do you draw about the Acquavella
17 situation in terms of the economics of purchasing a collection
18 in bulk as opposed to spread over time?

19 A Well, the -- the incentive for a buyer to buy a
20 collection in bulk without doing due diligence and to take it
21 all on and to take the risk of selling it on, is to typically
22 buy it at about a discount -- approximately a discount of 50%.
23 And that number is also reflected in the -- in the way that
24 the lending business works with the loan to value ratio of

1 Because in that instance the borrower or the lender is
2 assuming that they will be in a distress situation if they
3 have to foreclose on the art and have to sell it quickly. So
4 they similarly use a 50% discount factor.

5 Q So -- so -- what -- what is it that a lender typically
6 expects to receive in case it -- in the event that it has to
7 foreclose on the loan and liquidate the collateral?

8 A It is expecting to receive 50% of the low estimate.

9 Q Fifty percent of the low estimate?

10 A Of the low estimate.

11 Q Okay. Is this a consideration that routinely comes up in
12 connection with launching the kinds of art funds that you
13 described at earlier points in your career?

14 A Yes. Art funds like to look at distressed situations and
15 use a target number of 50% to -- if -- if they can avail
16 themselves of collections that they can buy amass and 50% is
17 used as -- as the number that justifies taking the risk of
18 buying a large block of property.

19 Q And what is your opinion as to what a seller might be
20 able to realize in connection with the sale of art at the DIA
21 to a single purchaser at a single point in time?

22 A My -- my -- my feeling -- my belief is that if the
23 collection were to be sold off to a single entity in one mass
24 sale, or en masse, that it would involve a 50% discount off of
25 the value of the collection.

1 Q Okay. Are you familiar with the term blockage discount?

2 A I am.

3 Q What is a blockage discount?

4 A A blockage discount is an instance where a similar group
5 of property is coming to the market and it is too much for the
6 market to bear. It is often applied in the cases of estates,
7 artist estates and what not and it is in the range of 35, 45%
8 is used by -- it is allowed by the IRS for purposes of -- of
9 valuing an estate for tax purposes because the sense is that
10 if too much property comes into the market at the same time
11 and it's too similar, it will de-value not only the property,
12 but also de-value the market overall.

13 Q Is there a -- is there a capacity issue or consideration
14 that plays into the concept of blockage discount?

15 A Yes, there is. That there is a limited number of
16 collectors in the marketplace for any individual work of art.
17 And that -- or -- or groups of works of art. And there is --
18 there is certainly capacity limitation.

19 Q Have you seen examples of blockage discounts in the
20 marketplace in your experience?

21 A Yes, I have.

22 Q Okay. Did you attempt to quantify or measure a blockage
23 discount in this case?

24 A I did. And -- and it was around the same number, about

25 50% -- a 50% discount

1 Q All right. And I think you testified already that you're
2 familiar with the concept of an unsold rate.

3 A Correct.

4 Q In the auction business. What -- what is an unsold rate?

5 A Unsold rates and actually Ms. Fusco spoke about this in
6 her testimony. Unsold rates are typical of -- of auctions.
7 They almost -- it is extremely rare, meaning like maybe
8 perhaps one auction a year that does not have unsold property.

9 Otherwise every auction has unsold property in the range
10 of 20% to sometimes as high as 34 or 40%. It's just in the
11 nature of the beast. There -- every item does not find a
12 buyer at an auction. So in factoring into any kind of selling
13 process, you would have to account for unsold rates.

14 Q How did you approach the question of unsold rates as it
15 relates to the DIA in this case?

16 A We -- we -- we calculated the unsold rates by sector for
17 Sotheby's and Christie's sales for the year of 2013. And we
18 applied them by sector to the four largest sectors of the
19 collection of the DIA American art pre-1950, post-war and
20 contemporary, impressionism, modern, and old master paintings.

21 And then we looked at an average rate for the rest of the
22 collection. And -- and in total we came up with an unsold
23 rate of about 26, 25%.

24 Q Okay. So you had -- you had the profile of the DIA

25 collection. We looked at that pie chart yesterday.

1 A Yes.

2 Q And -- and how did you -- or which unsold rates did you
3 look at specifically from the Christie's and Sotheby's data?

4 A Specifically which unsold rates?

5 Q By the sectors?

6 A I looked at the ones for post-war impressionist American
7 paintings. And old master paintings. And impressionist
8 modern post-war contemporary. And old masters, yes.

9 Q The -- the four that occupied the large majority of --

10 A Correct, correct.

11 Q -- the DIA collection?

12 A Yes, yes.

13 Q And where did you get the data for that?

14 A That was from the data that was accumulated on Sotheby's
15 and Christie's sales for 2013 by sector.

16 Q How did you get it? Who compiled it?

17 A We -- we calculated it manually.

18 Q And how did you do that?

19 A Off of the Sotheby's and Christie's web sites.

20 Q All right. And what was the range if you recall of the
21 unsold rates across the four sectors that you did look at?

22 A Twenty percent to 34%.

23 Q Are there factors that can expose the sale of a -- of an
24 art collection to greater unsold rate risk?

25 A Yes. If an area is out of favor, if an area has a lower

1 base of collectors. For instance right now the highest unsold
2 rate of those four sectors was old masters. And at 34%. And
3 that is -- and even a sub sector of that Nineteenth Century is
4 even higher still.

5 And those are areas where there is a paucity of
6 collectors and there is real weakness in the market. So the
7 unsold rates tend to be very high.

8 Q How about the size and the relative nature of this
9 collection when considered or compared against the financial
10 guarantees offered by auction houses like Christie's or
11 Sotheby's?

12 A Well, the -- the size of the collection is many times the
13 capacity of either auction house to -- to -- to guarantee it.

14 Q What does that mean?

15 A Well, you know, one way that -- that -- that in --
16 collectors with important works guard themselves against, the
17 BI risk is that they get a guarantee from the auction house
18 that the property will sell. In this case the size of the
19 collection is multiple times the capacity of Sotheby's or
20 Christie's to guarantee.

21 They have tended to guarantee with a maximum capacity of
22 300,000,000. Sotheby's -- Sotheby's has just recently, just
23 in the last month, increased its capacity, I believe, by
24 perhaps another couple hundred million. But you're talking

25 about a collection of the DIA that's in the billions of

1 dollars. And so that's well beyond the capacity and -- and
2 any --

3 Q So why -- why does that expose a sale of this magnitude
4 to greater unsold rate risk?

5 A Well, if -- if the item is not guaranteed, then it's --
6 then it's like a normal item that is sold. It's subject to
7 the kind of risk that other items are and that -- that the
8 item might not find a buyer in the auction room and not be
9 sold.

10 Q Have you -- would it be fair -- well, first of all, a --
11 a -- a hypothetical sale of the art at the DIA museum -- a
12 hypothetical sale of the art at the DIA museum has been
13 compared by some people to a celebrity sale. Have you heard
14 that in this case?

15 A I have.

16 Q And what is your reaction to that?

17 A I think it's absurd.

18 Q And why is that?

19 A Well, having worked the -- the celebrity sale that was
20 mentioned was one that I actually worked on and wrote the
21 marketing plan for. And that was the Jackie Onassis sale. I
22 was at Sotheby's when that sale took place.

23 And that sale was a celebration of Jackie O's life.

24 There was an aura around that sale that related to her, her
25 personality, her mystique and everything.

1 The sale of property from the DIA would not be a
2 celebratory event. It would be an event that in the art world
3 amongst collectors and other buyers would be considered to be
4 a tragic event. So it would not be sold in a celebratory
5 fashion.

6 It would not be marketed in a -- in a glamorous way. It
7 would be -- have to be sold in a discreet way and -- and it
8 would have an aura around it that was negative, not positive.
9 So I think that the wrong conclusions are being drawn by that
10 -- that person who is asserting that.

11 Q So do you think it would be fair to conclude that unsold
12 rates would be lower in connection with a potential DIA sale
13 because it is the DIA, one of the more prominent museums in
14 the country if not the world?

15 A I do. Because -- because in addition, to what I just
16 said, you also have the factor that a predominant amount of
17 the property in the DIA -- DIA collection is in areas which
18 are stagnating and where there are fewer collectors such as
19 American art pre-1950 and old masters which as we've seen from
20 the graphs, are areas that are -- are stagnate or falling.

21 Q I may have asked it -- I asked it -- the question was too
22 long. Do you agree that the unsold rates would be lower as a
23 result of this, or do you think they would stay the same?

24 THE COURT: Why don't we just ask the direct

25 question would the unsold rates be lower or higher?

1 Q Would the unsold rates be lower or higher is an excellent
2 question.

3 A I think the unsold rates would be about the same as they
4 are in the market today.

5 Q Okay. Have you had a chance to consider the impact of a
6 sale of part or whole of the DIA collection that did not go
7 through the major auction houses?

8 A I have, yes.

9 Q And what opinions did you draw in that regard?

10 A My opinion was that there is a very good chance given
11 Sotheby's relationship to the City of Detroit, and the museum
12 and Christie's, my experience at Christie's, and Christie's,
13 you know, nurturing of its brand and its -- the fact that it
14 has a museum department that Ms. Fusco works in and cultivates
15 those museum relationships, that the auction houses both
16 Sotheby's and Christie's would decline to sell this art.

17 And that therefore it would be sold -- have to be sold
18 through a secondary or tertiary auction houses, or a series of
19 secondary and tertiary auction houses.

20 Q And did you investigate and reach any conclusions as to
21 the impact on prices if that scenario were to play out?

22 A Yes. We looked at various artists in my report. One was
23 William Goddard, a Twentieth Century artist. Another was
24 Warhol. And we compared record prices at Sotheby's versus

25 Bonhams, a second tier auction house and Christie's versus

1 Phillips.

2 Q Well, first of all, how much of the marketplace do
3 Christie's and Sotheby's combine to occupy?

4 A Of the auction market? They have 36% of the auction
5 market totals. Split 18% between each -- each is at 18%.

6 Q Okay. Steve, can we put up City Exhibit 657, please?
7 Mr. Plummer, do you have that in front of you?

8 A I do. I do.

9 Q Do you -- do you recognize City Exhibit 657?

10 A Yes, I do.

11 Q And what is it without -- I don't want your conclusions,
12 what is it that 657 purports to depict?

13 A This exhibit depicts record prices or top prices by this
14 artist who is a star artist of the Nineteenth Century sector.
15 At the -- the light red line is the record prices at Sotheby's
16 from highest to fifth highest in descending order.

17 And the dark line is the highest price by that same
18 artist at Bonhams auction house from highest in order of
19 highest to lowest.

20 (City Exhibit 657 was identified)

21 q What is Bonhams auction house?

22 A Bonhams is a -- a third tier auction house. It's a
23 respectable auction house. It's a global auction house. But
24 it's not nearly of the stature of Sotheby's or Christie's.

25 O Okay. Who -- who assembled the -- or put this chart

1 together?

2 A We did, my team did.

3 Q And what data did you use?

4 A We used data from Art Net. And this is -- goes back to
5 the beginning of data collected by Art Net in the eighties.

6 So this is the records for the artist at both houses, both
7 over the last, you know, 20 some year period, 30 year period.

8 MR. IRWIN: Because I'll forget, Your Honor, at this
9 time I'd like to offer City Exhibit 657 for demonstrative
10 purposes.

11 MR. SOTO: No objection.

12 THE COURT: It is admitted.

13 (City's Exhibit 657 was admitted)

14 Q Mr. Plummer, what -- what conclusions do you draw about
15 the data that is depicted in City 656?

16 A The conclusions I draw are that Sotheby's and Christie's
17 have a global network and they have a sophistication in
18 marketing that is unparalleled by these other auction houses
19 and they have a client base that is unequalled. And therefore
20 to achieve maximum value for works of art to be sold, they
21 need to be sold through Sotheby's or Christie's.

22 Q And what are the price differentials that this chart
23 shows for the top five sales for this particular artist?

24 A Well, at the -- the most extreme it's you're looking at a
25 -- a -- a 1.2 million dollar figure to a \$200,000 figure. So

1 roughly, you know, whatever percent that equates to.

2 And at the closest, at the top level you're looking at a
3 differential of over \$800,000. So you're looking at a very
4 significant differential of up to 50% or more.

5 Q Can we look at one more? Steve, could you put up City
6 Exhibit 658, please? Mr. Plummer, what is City Exhibit 658?

7 A This is a similar comparison. This is between Christie's
8 and Phillips. Phillips is a much smaller auction house. It
9 tends to focus in the contemporary sector and is not as
10 comprehensive an auction house as are Sotheby's and Phillips
11 -- or Sotheby's and Christie's.

12 And it shows again in descending order of the top prices
13 for this artist at -- at each house. The -- the light red is
14 Christie's, the dark red is Phillips. And you can see that in
15 the one instance there was somewhat comparable at a record
16 price, Christie's was at 70,000,000, and above 70,000,000 and
17 -- and Phillips was a little over 60,000,000. But beyond that
18 it starts to fall off to be a very significant differential.

19 (City's Exhibit 658 was identified)

20 Q Did -- did you assemble the data and put this chart
21 together in the same manner that you did for City Exhibit 657?

22 A I did.

23 MR. IRWIN: Okay. Your Honor, I -- the city would
24 offer City Exhibit 658 for demonstrative purposes.

1 demonstrative.

2 THE COURT: All right. It is admitted.

3 (City's Exhibit 658 was admitted)

4 Q Mr. -- Mr. Plummer, you -- you -- we've been discussing
5 that -- that clients come to Sotheby's or Christie's for --
6 for better pricing. Do you have any real world data or
7 examples of collection sales that would support that opinion?

8 A I'm not sure I know what you're referring to.

9 Q Are you familiar with the Pierre Berge and the Yves Saint
10 Laurent collections there?

11 A Yes, yes, yes. In 2008 or 2009, actually while I was
12 still at Christie's, Yves Saint Laurent died. And his life
13 partner, Pierre Berge was the executor for the estate. And it
14 was -- and actually Ms. Fusco was speaking about it on the
15 stand, it was one of the best collections of decorative arts
16 ever assembled in recent memory.

17 And Pierre Berge owned his own auction house in Paris.
18 An important auction house in Paris, but a smaller auction
19 house. And he, even though he owned his own auction house,
20 realized that the best prices would be achieved at Christie's.
21 So rather than selling it through his own auction house he
22 consigned it to Christie's and Christie's did indeed have a
23 very successful sale.

24 Q And why is that significant in your analysis?

25 A Because it -- it -- it speaks to the issue of Berge knew
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 25 of 256

1 that he had a -- a collection that needed a global audience
2 and including far reaches in Asia. And that was critical to
3 -- to the success of the sale and -- and gave it multiples
4 that it wouldn't have had had it been sold through his own
5 house.

6 Q Did -- did you form an opinion considering all of this
7 data, did you form an opinion as to what percentage discount
8 would be appropriate to apply to a hypothetical DIA sale?

9 A I did.

10 Q And what was that?

11 A I arrived at what I felt was based on this data and --
12 and the Berge example, of -- of a factor of 20% -- or discount
13 factor of 20%. I felt that that was actually quite
14 conservative. I think you could even justify a higher number,
15 but quantifying such a thing is -- is -- is difficult to do.

16 Q All right. Let's -- let's talk about another topic.

17 Let's talk about -- we talked about an immediate sale. We
18 talked about the factual scenario of immediate sale. Do you
19 recall that?

20 A Yes.

21 Q Did you form an opinion as to what would be the ideal or
22 optimal sequencing of a sale of art, a hypothetical sale of
23 the DIA collection?

24 A I did, yes.

25 Q And what is that generally? Can you describe that?

1 A Yes. That would be an orderly liquidation over a period
2 of six years or more.

3 Q What would happen in the first several years of that
4 process?

5 A You would be -- you would -- it would require probably a
6 period of 18 months to two years to catalog and strategize for
7 the right sales, make a marketing plan and all of that. And
8 then you would begin selling in year three.

9 And so from year three through year six. I also factored
10 into that analysis that you would have BI's that as is typical
11 in -- or unsold property and as is in typical -- as is typical
12 of the art world that those -- that property would then be
13 re-offered several years later at a 20% discount. So that you
14 would have it revolving back into the sale stream.

15 Q Why would the -- that kind of sale, the orderly sale over
16 that length of time, why would that potentially generate
17 higher prices than an immediate sale?

18 A Well, you -- you're -- you're able to -- to deal with
19 market capacity issues. For instance the value of the
20 American collection and the value of the old masters
21 collections far exceeds what could be sold in any single year.
22 It was about double the sales of Sotheby's and Christie's.

23 And so that would flood the market. So if you had an
24 orderly liquidation, you could plan to sort of mete out the

25 property in batches that would insure that the market was not
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 27 of 256

1 flooded.

2 Q And when would actual sales of art take place in an
3 orderly liquidation over time?

4 A Actual sales would take place in years three through, I
5 believe eight.

6 Q And did you form an opinion as to how to account for an
7 orderly sale over time in connection with a discount factor?

8 A Yes, I did. I added in appropriate expenses for holding
9 the art and did the calculation according to unsold rates.
10 And came to a year by year summary and then used a -- a
11 discount factor and -- and got to a present value.

12 Q Did you account for the cost to the museum of storing
13 this property over time?

14 A I did.

15 Q And what was that?

16 A Initially it was about \$6,000,000. And that number then
17 diminished over time as the collection shrank and property was
18 sold off and -- and became a smaller nut to be managed.

19 Q And -- and what discount rate did you use in connection
20 with your analysis?

21 A Twelve percent based on the fact that most art investors
22 use a 15 to 18% expectation, you know, return on their -- on
23 their investments, art investments.

24 Q Did you take the volatility of the art market into
25 account?

1 A Yes. In fact that it is a highly volatile market and
2 illiquid.

3 Q Did you have a real world example from the British Royal
4 Pension Fund to consider in connection with it?

5 A I did, yes. The British Royal Pension Fund took multiple
6 years to -- to liquidate and also they had a return of over
7 11%.

8 Q Okay. Do you recall the -- the -- from -- in -- in
9 connection with where you started your valuation and where you
10 finished after you did this MPV analysis, what the magnitude
11 of that discount was?

12 A On -- without allowing for any delays that might be
13 caused by litigation, it came to about 50.5% discount.

14 Q Okay. What about delays with litigation? What are you
15 referring to there?

16 A Well, as I lay out in my report, I think the example of
17 Fisk University and the Steglitz collection given by Georgia
18 O'Keefe is a very relevant example of what would happen -- is
19 likely to happen with the DIA.

20 Q And what happened in those cases?

21 A The -- the Attorney General intervened in the sale and
22 the -- the sale went through various aspects of litigation and
23 it was -- the sale was tied up for five years. And based on
24 comments that had been made in the press by the current AG and

25 other examples that I list in my report of -- of people

1 contesting sales such as Brandeis University and others of
2 property that has been gifted, that the most likely scenario
3 for any sale of the DIA collection is a prolonged delay before
4 it could be sold. And it is likely to be in the range of five
5 years.

6 Q Did you perform a corresponding net present value
7 calculation on that scenario, a -- a delayed start?

8 A I -- I -- I did.

9 Q And what was the net impact of the net present value
10 calculation in that scenario when there is litigation delay?

11 A Well, when you push the sale of the property out by five
12 years yet still do it in an orderly liquidation, you're now
13 selling out over a much longer period of time and so that
14 gives you a much more significant present value discount. And
15 it is -- it -- it ended up being 69%.

16 Q Did you consider any other discount factors in connection
17 with your analysis?

18 A I did.

19 Q Can you tell me one of those?

20 A One of them is market disfavor. And again this is a hard
21 number to quantify. There are certain sectors that I feel
22 would not be too affected. I think that post-war contemporary
23 and impressionist and modern have a global collecting base.
24 So I don't think too many Europeans will be too distraught
25 about buying art from a defunct American institution.

1 But I don't think that applies within the American
2 community. And I think that the -- specifically the American
3 art pre-1950 where the DIA has a significant holdings, that
4 that is an older group of collectors who are very patriotic.
5 A lot of them are on the boards of museums throughout the
6 United States and I think that a lot of them will not
7 participate in purchasing that art.

8 And that they will also -- are likely to be in an awkward
9 position because of being on the boards of those institutions
10 that were they to purchase that art, they might have to resign
11 from their positions on the museums that they're connected
12 with. So I calculated a factor of 50% of the American art
13 market could be affected if -- if that art is sold.

14 Q By American art, you mean that sector?

15 A That sector of American art.

16 Q You limit it -- yes.

17 A American art pre-1950.

18 Q Did you have any real world examples concerning -- in
19 connection with that opinion?

20 A Yes. There was a recent sale at -- at -- just actually
21 in the last several months at Christie's. And it -- Isabelle
22 and the Pot of Basil. It was at -- sold by the Delaware
23 museum and it had been -- with much controversy. And had been
24 -- they had been admonished by the Museum Directors

1 off a debt.

2 And Christie's put a low estimate of \$8,000,000 on it.

3 It was offered in the sale in London, in the sale that
4 otherwise did quite well, and it sold for \$4,000,000, half of
5 the low estimate.

6 And it's our sense, my sense that it was the taint around
7 that picture and the bad publicity around it which goes to my
8 larger point about not being able to market the DIA property
9 as a -- as a celebratory auction. Resulted in a -- a -- a --
10 a discount of 50%. It -- it went for half of what it was
11 expected to sell for.

12 Q And what was the taint surrounding that picture?

13 A The taint was that it was -- there was outcry in the
14 museum community that it was being sold not to fund
15 acquisitions, but being sold to fund a debt -- a debt
16 repayment.

17 Q And were there sanctions imposed on the Delaware museum?

18 A Yes. The day after the sale happened, the AMD issued a
19 sanction stipulating that no American museums were to do
20 business with more or less or share property with, or -- or
21 have traveling exhibitions visit the Delaware museum. So at
22 the moment the Delaware museum sits as an outcast in the
23 museum world.

24 Q And it -- and it did not hit the low estimate on the sale
25 price?

1 A It was well below, 50% below.

2 Q Did you have occasion to --

3 THE COURT: Excuse me one second. I think you used
4 the acronym AMD was -- was that what --

5 A Yes.

6 THE COURT: -- you said?

7 A Yes.

8 THE COURT: What does that stand for?

9 A It's the Museum Directors Association. It -- it's the
10 group of all of the leading museum directors in America.

11 Q Does -- does the AMD issue guidelines for museums?

12 A They do.

13 Q And what do the guidelines say with regard to selling
14 pieces of art?

15 A They say that art can only be sold to fund future
16 acquisitions and cannot be sold to fund operating expenses or
17 debts.

18 Q And what do the guidelines provide that the AMD can do to
19 a museum who acts in --

20 A That they can sanction them as -- and -- and revoke their
21 membership in the AMD.

22 Q Did you have occasion to consider the potential impact of
23 a crash in the post-war and contemporary sector?

24 A I did. Based on what happened in 1990, '91, and what
25 happened in 2008, 2009 which we showed the graphs for

1 previously, we -- that if that art were to be sold over a long
2 period of time, that at some point the -- the market is likely
3 to hit another crash.

4 And if that crash were to happen based on historical
5 precedent, it would be about 50%. Now, it might not all hit
6 the -- the -- the collection because the -- the sellers could
7 decide to take the art off the market and not sell it until
8 the crash passed. But if -- if it was sold into a market that
9 was crashing the effect would be 50%.

10 Q Did you have occasion to consider and have an opinion on
11 the likelihood of any of this art to be purchased by other
12 museums for public viewing?

13 A I did.

14 Q And what -- what is your opinion on that?

15 A My opinion is that again based on 2013 activity of -- of
16 institutions buying, that their acquisition budgets are
17 relatively small. And that relative to the competition
18 provided by the great wealth out there, that the amount of --
19 the number of works in the museum in the DIA's collection that
20 would be sold, most of them would not be sold to other
21 institutions because they don't have the funds to compete
22 against private collectors and therefore most of those works
23 would go back into private hands and leave public view.

24 Q Steve, could you please put up City Exhibit 662? Mr.

25 Plummer, do you recognize City Exhibit 662?

1 A I do.

2 Q What does it purport to depict?

3 A It depicts the market share of sales by buyer group in
4 2013.

5 (City's Exhibit 662 was identified)

6 Q Did you put this chart together?

7 A Well, it was -- it is -- we put it together based on data
8 from art economics and -- and the TFAF group.

9 MR. IRWIN: Your Honor, I would offer City Exhibit
10 662 for demonstrative purposes.

11 MR. SOTO: No -- no objection for demonstratives.

12 THE COURT: It is admitted.

13 (City's Exhibit 662 was admitted)

14 Q In 2013, Mr. Plummer, what -- what percentage of sales by
15 value were made by public institutions?

16 A Nine percent.

17 Q And to what do you attribute that?

18 A Again that the -- the acquisition budgets of the various
19 museums are incredibly small relative to the size and value of
20 art being traded today. I believe in my report I say that the
21 acquisition budgets for MET and MOMA each are somewhere in the
22 range of \$30,000,000 each.

23 And you have great master works that are trading in the
24 hundreds of millions of dollars or in the high, you know,

25 70,000,000, \$80,000,000. So the museums just can't keep up.
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 35 of 256

1 And so therefore that's why you have private collectors
2 accounting for 78% of the marketplace.

3 Q Have you had a chance to consider the potential impact on
4 the DIA of -- of selling only its most prized pieces?

5 A I have.

6 Q And what is your opinion on that?

7 A Well, it would -- you know, as -- as Ms. Fusco said, the
8 other day that the -- the items that are the most treasured in
9 the museum are the ones that have the most commercial value.
10 So if you were to denude it of those important items like the
11 Bruegel and Cotopoxi and -- and other great works, you would
12 diminish its reputation as a -- as an international
13 institution of standing and it would become essentially a
14 local regional museum and it would -- its attendance would
15 drop significantly.

16 It would more or less fall off the map in terms of
17 international visitors. It would most likely lose its donor
18 base because once you sell off art that has been gifted,
19 donors stop giving to museums because they feel the trust has
20 been broken and they don't feel that their gifts are -- are --
21 are going to be protected. So that you end up with a much
22 diminished institution.

23 Q Is there a term Bilbao effect that you have come to know
24 in connection with your business?

25 A Yes, I have.

1 Q What does that mean? What is Bilbao effect?

2 A Bilbao refers to the City of -- of Bilbao in Spain which
3 a lot like Detroit had a manufacturing base that went away.
4 And it was in rather dire straits economically. It was -- it
5 was a depressed environment.

6 And the city council or city leaders decided that they
7 needed to make it a tourist attraction and be -- participate
8 in the tourist trade coming through Spain. So they -- they
9 decided to create a museum. And they hired Frank Gehry to
10 create a -- a spectacular museum and they made a deal with the
11 Guggenheim museum to borrow part of their collection as well
12 as arrange funding to make acquisitions to go to new
13 collection.

14 And the -- the net result was that now Bilbao is one of
15 the -- is one of the leading major tourist attractions in
16 Spain after Madrid and -- and the -- the other city. And it
17 is now referred to frequently as the Bilbao effect. There's
18 other cities around the world who are trying to replicate that
19 such as Abu Dhabi, Dubai, and Doha.

20 Q Are those conditions ripe in Detroit?

21 A They are ripe in Detroit. They are a similar analogy is
22 Brooklyn.

23 MR. SOTO: Objection, Your Honor, foundation.

24 There's nothing to suggest in his expert report that he's done

25 any analysis of this or anything to support this testimony.

1 And it's pretty far afield.

2 MR. IRWIN: I -- the witness has testified that he's
3 investigated this and was prepared to speak about it. I don't
4 think he was asked specifically about this at his deposition.
5 So he wasn't in a position to give that response.

6 THE COURT: I'll permit it. Go ahead, sir.

7 A Sure. And this is -- this is a conversation I've had
8 with the head of the Brooklyn museum several times, Arnold
9 Lehman. Is that in the late nineties early two thousands, as
10 real estate values have gone up so high in Manhattan, a lot of
11 artists started flocking to Brooklyn in part because of the
12 Brooklyn museum and the Brooklyn museum's collection which is
13 similar to DI -- to DIA's.

14 And -- and it has now reached a point where it is the
15 artistic center of New York rather than Manhattan. And a lot
16 of it is the cultural community around the Brooklyn museum.

17 And a similar example could happen here because the
18 artists are driven by cheap real estate. And a -- cheap real
19 estate and a cultural attraction. And that ingredient, both
20 ingredients are here in Detroit, cheap real estate and their
21 world class museum.

22 Q And what -- what impact would closing the museum have on
23 that possibility?

24 A It would foreclose that -- that event. Artists would
25 have no reason to move here.

1 MR. IRWIN: Your Honor, I have no further questions
2 at this time.

3 CROSS EXAMINATION

4 BY MR. SOTO:

5 Q Mr. Plummer.

6 A Good morning.

7 Q We've met before. You have a degree in economics,
8 correct?

9 A I do.

10 Q And you -- you're not certified as an art appraiser, are
11 you?

12 A I am not.

13 Q And you have no formal education in appraising art, do
14 you?

15 A I do not.

16 Q And you have no formal training in appraising art, do
17 you?

18 A I do not.

19 Q And in fact you yourself have never conducted an art
20 appraisal -- an appraisal of art in your life, have you?

21 A No, I have not.

22 Q Okay. Now in 2009 you founded a company called Artvest,
23 correct?

24 A Correct.

25 Q And it was founded in part to advise individuals,

1 individual clients on buying and selling art, right?

2 A Correct.

3 Q But the only time Artvest has ever hired an art appraiser
4 was to do the work on this DIA project that you testified
5 about today and yesterday, correct?

6 A The only time we've hired an appraiser, but we have
7 worked with valuers before.

8 Q Okay. And despite hiring appraisers in connection with
9 this project, you don't consider the result of Artiest's work
10 on this project to -- to be an appraisal, do you?

11 A We considered it an evaluation of the collection.

12 Q You call it an evaluation instead, right?

13 A Yes.

14 Q And you conducted your evaluation using what you
15 described as a fair market value, correct?

16 A Correct.

17 Q And this is the same value that Christie's chose when it
18 conducted its appraisal, correct?

19 A Correct.

20 Q And in connection with your evaluation, you used the
21 appraisal values Christie's developed for the first 17 -- for
22 the 1,700 works of art that they had appraised in your
23 appraisal, correct?

24 A In our evaluation, yes.

25 Q That's right, evaluation, sorry. But you still consider
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 40 of 256

1 yours as you've said an evaluation, not an appraisal.

2 A Right.

3 Q And that's because it's your view that an appraisal would
4 not take into account market factors, market conditions,
5 correct?

6 A To the extent that we did, yes.

7 Q Okay. So you're familiar with the Uniform Standards of
8 Professional Appraisal Practice which is called USPAP, right?

9 A I am.

10 Q And you reviewed those standards in connection with your
11 expert report, correct?

12 A I -- I've had -- was aware of them before my expert
13 report.

14 Q And reviewed them in connection with it, correct?

15 A Correct.

16 Q Okay. But you didn't apply those standards in your
17 valuation, did you?

18 A There were some aspects of it that we applied but like
19 Christie's we do not believe that USPAP is necessarily
20 applicable and it is not required by any regulation or
21 regulatory body.

22 Q And when you reviewed USPAP in connection with your
23 deposition and -- and with the work you did here, did you
24 notice that it requires an appraisal to analyze the relevant

25 economic conditions at the time of the valuation including the
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 41 of 256

1 market acceptability of the property, the supply, the demand,
2 the scarcity, and the rarity?

3 A I did.

4 Q Now if I heard you right you applied discount factors in
5 your analysis because you said an appraisal wouldn't take into
6 account all the market factors you took into account in your
7 discounts, right?

8 A Most of the market factors, yes.

9 Q But you would agree that market acceptability was one of
10 those market factors that you considered in your discounts,
11 correct?

12 A Yes.

13 Q And you would agree that supply and demand are market
14 factors that you considered in your discounts, correct?

15 A Yes.

16 Q And again scarcity and rarity are also market factors
17 that you considered in your discounts, right?

18 A Correct.

19 Q Let me move on to your employment experience for just a
20 minute. After college you began your career at Sotheby's,
21 correct?

22 A Correct.

23 Q And you spent 16 years at Sotheby's, right?

24 A Yes.

25 Q But you never conducted an appraisal while at Sotheby's,
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 42 of 256

1 did you?

2 A No.

3 Q And in 2003 you joined Fernwood Art Investments and you
4 worked there for two years, correct?

5 A Three years.

6 Q Three years, okay. And you were the Chief Operating
7 Officer and the President at Fernwood, correct? But you again
8 never conducted an art appraisal at Fernwood, did you?

9 A Not an appraisal, no.

10 Q Okay. And while you were at Fernwood, you've testified
11 that you structured two art funds, correct?

12 A Correct.

13 Q But it's true, Mr. Plummer, that none of the funds
14 actually got off the ground, none of them got funded, correct?

15 A Correct.

16 Q And after Fernwood you spent two years in the financial
17 services group at Christie's, correct?

18 A Correct.

19 Q And one of your main responsibilities was to develop art
20 funds to try to start an art lending business, correct?

21 A They were two separate things. The art lending business
22 was separate from the art funds.

23 Q And you were -- your responsibility was to start both,
24 correct?

25 A Yes.

1 Q But you were never able to raise the funds for the funds,
2 correct?

3 A Correct. Well, actually to correct that, we did raise
4 the funds but Christie's shut it down before we closed on the
5 funds.

6 Q So that effort didn't get off the ground either, correct?

7 A Correct.

8 Q And the entire division was closed in 2009?

9 A Correct.

10 Q Which -- now after the division of Christie's was closed,
11 that's when you founded Artvest, correct?

12 A Correct.

13 Q So other than your current engagement you would agree
14 that you have no experience in valuing a collection of art and
15 certainly not one as -- as large as the DIA's, correct?

16 A I -- I -- I have not done an appraisal, but I have valued
17 other collections of art, but not one as large as the DIA's.

18 Q Okay. And you've never been involved in a sale or a
19 monetization of an art collection the size of the DIA's,
20 correct?

21 A No. And I can say nobody has.

22 Q Okay. That's your view, correct?

23 A I'm positive of that.

24 Q Okay. And finally, in this line of questioning, you've
25 never brokered a loan for an institution like the DIA,

1 correct?

2 A No, I have not brokered a loan for an institution. I
3 have for private collectors.

4 Q Now Christie's appraised only 1,700 works of art in the
5 DIA collection which is about 3% of the entire DIA collection,
6 correct?

7 A I think it was closer to 4 1/2% or something like that.

8 Q Four and a half. I think my math is off 1,700 and 62,000
9 something like that. That would be the calculation?

10 A Well, I was including things they looked at which was
11 3,000 some items, but --

12 Q Okay. So about 4 1/2%?

13 A Yes.

14 Q Okay. And when you did your evaluation which I am not
15 going to go into, you testified that even in your
16 extrapolation, you gave zero value, nothing to any piece that
17 was under 5,000, correct?

18 A Correct.

19 Q And I think you numbered that to be about 45% of the DIA
20 collection, correct?

21 A I don't remember the exact percentage.

22 Q Okay. So if you took the 62,000 and you divided it in
23 twenty or 21,000 pieces that you didn't value, that would be
24 the percentage. I -- I did the math, it's about 45%.

25 A Uh-huh.

1 Q So even in your extrapolation almost half of the DIA
2 collection had no value in your extrapolation?

3 A Yes. Just as Ms. Fusco said, most museum have a lot of
4 property that is for scholarly and historical value that does
5 not have commercial value.

6 Q So your evaluation doesn't account for almost half of the
7 DIA collection for whatever reason, correct?

8 A After you exclude the high value items, yes.

9 Q Okay. And you apply these various discount factors that
10 reduce what you call the indicative valuation, correct?

11 A Correct.

12 Q And you do that by applying various different potential
13 factors and I call them hypothetical scenarios, correct?

14 A Correct.

15 Q And after applying the discount factors you estimate the
16 range of value that you think the DIA collection would sell
17 for as between 1.1 billion and 1.8 billion, right?

18 A Correct.

19 Q And in applying those discount factors, for example, the
20 blockage factor or the immediate sale factor that you spoke to
21 the Judge about earlier --

22 A Right.

23 Q You're assuming a sale, correct? Those apply to sales?

24 A Correct.

25 Q Okay. So let's look at the -- let's look at the

1 immediate liquidation. If I understood you correct, that
2 factor applies if there's an immediate sale of all of the art
3 to one person, that's the way you testified about it earlier,
4 right?

5 A One person or a syndicate of people would be more likely.

6 Q And that's the assumption that's built into that
7 discount, correct?

8 A Right.

9 Q And you don't know if the DIA art is going to be sold and
10 you certainly don't know if it's going to be sold to one
11 person at one time, correct?

12 A No. These were hypotheticals for the Court to consider
13 depending on what actions were taken.

14 Q Okay. So now let's look at the blockage discount. You
15 apply this blockage discount based on two factors, correct?
16 Again one of them is the time frame of the sale, correct?

17 A Uh-huh.

18 Q Fairly concentrated time frame for the sale, correct?

19 A Right.

20 Q And the other is the number of similar items involved,
21 correct?

22 A Correct.

23 Q So that if there is a large diversity of items involved
24 then you wouldn't apply the same blockage that you -- that you
25 talk about in your report, correct?

1 A Well, if I can just clarify. I really only applied an
2 immediate sale discount. I used the blockage discount just to
3 illustrate as a further supporting point the -- the immediate
4 sale discount because they are related. But I really only
5 applied the immediate sale discount. I did not apply the
6 blockage discount.

7 Q Okay. So even -- and your analysis, and I -- and I'm
8 getting to that. The immediate sale discount that you applied
9 was 50%?

10 A Correct.

11 Q And you applied the immediate sale 50% discount based on
12 your analysis of the way loans are -- are treated in the art
13 world where there is a loan of art typically the
14 collateralization only gets 50%, correct?

15 A As well as also the Pierre Matisse example.

16 Q Got it. So you understand though that there are no
17 studies that you can point to where a blockage discount or an
18 immediate sale discount of 50% is applied, correct?

19 A There are no studies because the art market is too
20 secretive for such things to be revealed.

21 Q And you understand the difference between a loan and a
22 sale, correct?

23 A I do.

24 Q And so the fact that somebody might require for

25 collateral on a loan 50% may or may not relate to anything on
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 48 of 256

1 a sale, correct?

2 A Well, no, that's not correct because most people who I --
3 I engage with all of the lenders in the art industry on a
4 regular basis. And when they are making a loan they are
5 making that loan with the full expectation that they may
6 ultimately have to sell that collateral. So they are taking
7 into consideration that that is what they're going to have at
8 the end of the day is that 50% value. So they are looking at
9 that as a possible sale when they give that loan.

10 Q And I -- and I understand the difference between the risk
11 of a loan and -- and why you might have large collateral in
12 connection with an art loan. But -- but what I -- what I'm
13 asking you is, can you show this Court any study that relates
14 that risk, the risk of, you know, wanting to have collateral
15 on a loan, to why in an immediate sale 50% would be the
16 number?

17 A There is no such study.

18 Q Let's move on to the discount you applied for not selling
19 through Sotheby's or Christie's, I believe, correct?

20 A Uh-huh.

21 Q And -- and -- and you do that because you think that the
22 auction houses may refuse to participate in the sale, correct?

23 A I do.

24 Q Now I asked you about this in your deposition. You

25 didn't speak to anyone at Sotheby's regarding this opinion.

1 correct?

2 A Correct.

3 Q Okay. And in fact you avoided you said speaking to
4 anyone at the auction houses regarding this, correct?

5 A Correct.

6 Q And that's still the case, correct?

7 A Correct.

8 Q Okay. But you said you did speak to a friend at
9 Christie's in a social setting, right?

10 A Yes.

11 Q But you couldn't disclose that person's name to me?

12 A Right.

13 Q And you said that's why you don't think that Christie's
14 would want to get involved in a sale of this nature, correct?

15 A That was a reason. I mean I was also part of the senior
16 management at both Sotheby's and Christie's. And know how
17 they value their brands and how they run their companies and
18 that they have museum service departments that are cultivating
19 museum relationships. So it's based on inside experience
20 within both corporations.

21 Q So just so that it's clear for the Court as to the basis
22 of your opinion, when you were at Sotheby's you worked in
23 marketing significantly, correct?

24 A Correct.

25 Q And when you were at Christie's you worked in the -- two
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 50 of 256

1 years of trying to develop their art fund and -- and lending,
2 right?

3 A Financial services group.

4 Q Okay. So in your conversations, did you confirm that
5 either auction house would refuse to sell the art works from
6 the DIA collection if it were required by a Court under a plan
7 of adjustment?

8 A I did not have that specific conversation with either
9 house.

10 Q But in any event based on that discount, you dropped your
11 low value estimate by another 20%?

12 A That was applied in one instance to illustrate the
13 impact. That was not applied in all -- all cases. All of
14 these discounts were not applied simultaneously, they were
15 done selectively.

16 Q Let's turn to another discount you applied. Again, so
17 that I can understand the basis of it. The litigation delay.
18 Your analysis accounts for a five to six year litigation
19 delay, correct?

20 A Correct.

21 Q And your report says that if any of the collection is
22 sold or modifies, litigation is likely from the Michigan
23 Attorney General?

24 A Correct.

25 Q From the DIA Corp., and from heirs and donors, correct?

1 A Yes.

2 Q Okay. Now you haven't done any research regarding the
3 transferability of any of the art at the DIA collection,
4 correct?

5 A You mean in terms of the -- the documentation of that
6 art? You mean --

7 Q Restrictions on transferability?

8 A No, I have not.

9 Q Okay. And you've done no research in terms of the
10 ownership of the art at the DIA, correct?

11 A Well, actually our listing of the property that we have
12 from the DIA actually has the source of the art, who the donor
13 was or -- or how it was purchased.

14 Q Okay. But that wasn't my question. My question was,
15 have you done any research regarding who the rightful owner is
16 of the art at the DIA?

17 A No.

18 Q And so that it's clear for the Court, you haven't spoken
19 to any heirs or donors to the DIA?

20 A No, I have not.

21 Q Okay. And you've made no assessment of the strength of
22 any lawsuit that might or might not be filed by the DIA or
23 anyone else, correct?

24 A No, I have not. I've just used other examples of other
25 cases that are similar.

1 Q Okay. So let's go to those examples. Did you review the
2 facts of the Fisk -- Fisk University lawsuit?

3 A I did.

4 Q Now do you believe that the facts of the Fisk University
5 lawsuit are the equivalent of the DIA maybe being required to
6 sell art as part of a plan of adjustment under a Court order?

7 A I think there's some strong similarities.

8 Q Okay. And -- and did you review the facts of the
9 Brandeis University matter?

10 A I -- I did.

11 Q And do you think there's some strong similarities there
12 as well?

13 A I do.

14 Q Okay. And you didn't have any personal experience with
15 the sale of a work of -- of art of an institution that was
16 held up in litigation, you personally, have you?

17 A Me personally? No.

18 Q So the five year delay is an assumption based on the
19 assumptions that we just discussed, correct?

20 A It's an opinion based on what is out in as record for
21 these other institutions.

22 Q Going back to the immediate sale discount. Because we
23 heard from Ms. Fusco that there are some iconic pieces at the
24 DIA now. So for example she used Bruegel, the Elder's Wedding
25 Dance.

1 A Uh-huh.

2 Q And that would be a piece that wouldn't be affected by an
3 immediate sale discount, would it?

4 A Possibly not.

5 Q Okay. And there might be some other pieces like that,
6 correct?

7 A There would be some other -- other pieces like that,
8 correct.

9 Q But in your analysis you apply it to the entire
10 collection that you're referring to on immediate sale of
11 everything to one person at one time, correct?

12 A Yes. But you may have other pieces that will go for so
13 little that it would compensate for that going for more.

14 Q I understand. I just -- I just want to make sure that we
15 account for some of these differences while the Court is
16 reviewing it.

17 The under performing sectors, you -- you applied another
18 discount that you talk about as the under performing sectors,
19 right?

20 A I don't believe I classify it as that. I'm not sure what
21 you're referring to.

22 Q Okay. So in your report at Page 24 and Paragraph 37, you
23 talk about under performing sectors or sectors that have
24 fallen out of favor. That's what I'm talking about.

25 A Correct. I talk about that, yes.

1 Q Okay. And you apply a discount for the fact that you
2 believe that, you know, as you put up in your chart and
3 discuss with -- on your direct examination, that there were
4 some sectors that were under performing, that the DIA had some
5 large collections and some under performing sectors, correct?

6 A Correct. But I didn't apply a discount for that.

7 Q Okay. But it's clear that even as to those under
8 performing sectors, one of them is the old masters, correct?

9 A Correct.

10 Q But this under performing sector, I think you said that
11 it had fallen out of favor because there are just so few
12 really quality pieces available, correct?

13 A No, I did not say that. I said it was because there were
14 fewer collectors and they were older and newer collectors are
15 coming into the market to buy post-war and contemporary rather
16 than going into old masters and American pre-1950.

17 Q Isn't it actually your view that the problem with the old
18 masters is that there are very few good quality works
19 available in the market?

20 A That is also true, but what I said first is the primary
21 reason.

22 Q But you would agree that even that reason wouldn't apply
23 to the iconic pieces that are at the DIA?

24 A You know, that's a difficult question to answer because
25 you have to have the number of buyers out there to buy a

1 volume of work. And right now I don't believe there is that
2 volume of buyers out there. You might be able to sell the
3 Wedding Dancers, but there's an enormous collection at the
4 DIA. And I don't believe there are enough collectors in the
5 market to buy that collection right now.

6 Q But I didn't ask you about the collection. I asked you
7 about the iconic works. Sir, let's -- you can take the 11
8 critical pieces that -- that Christie's listed in its report.

9 A Right.

10 Q Those would not be affected by disfavor of any sector,
11 correct? Because they'd be iconic pieces.

12 A Except for the American pieces. I think the American
13 pieces may have some difficulty reaching the prices that
14 people think they would.

15 Q Now just again so it's clear for the Court. The blockage
16 discount, the immediate sale discount, all of the discounts
17 we've been talking about that apply -- that -- that you
18 discussed, apply to sales, correct?

19 A Yes.

20 Q But they wouldn't apply if there were a loan on -- on --
21 on the collection or another form of monetization other than a
22 sale, correct?

23 A No, because if -- if a loan were taken and then that loan
24 was defaulted on, the lender would assume all those risks.

25 Q And -- and if a loan were taken and the loan were not
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 56 of 256

1 defaulted on, you wouldn't have an immediate sale discount,
2 correct?

3 A No.

4 Q You wouldn't have a blockage discount?

5 A No.

6 Q Correct?

7 A No.

8 Q You wouldn't have a discount for litigations or any of
9 the other ones that you mentioned, correct?

10 A No.

11 Q Now Mr. Plummer, let me ask you to take a look at
12 Paragraph 69 on Page 42 of your -- do you have a copy of your
13 report?

14 A I'm not sure.

15 Q It wasn't in that binder. Let me -- let me hand you one
16 just so you can take a look at it.

17 A Thank you.

18 Q It's Paragraph 69 on Page 42.

19 A Okay.

20 Q And you opined that -- oh, it's up there on the screen.
21 But I'll paraphrase it for you. That by the time Christie's
22 completed the recommendations for monetization section of
23 their report, it was disincentivized to pursue them due to
24 market backlash from the DIA and other market participants.

25 See that?

1 A I do.

2 Q And it was your opinion that while the firm had many
3 leading art specialists in the industry, and we heard about
4 them from Ms. Fusco, that it did not have the in house
5 intellectual capital to pursue the unique monetization
6 analysis, correct?

7 A Correct.

8 Q That was your opinion, correct?

9 A Correct.

10 Q And it's your view that Christie's lacked this in house
11 intellectual capital because it had disbanded its financial
12 services group, correct?

13 A Correct.

14 Q And that's the group that you had headed for those two to
15 three years, correct?

16 A Correct.

17 Q Okay. So it's your testimony that Christie's didn't have
18 the capacity to carry out the monetization alternatives
19 because they essentially had closed the department that you
20 headed up, correct?

21 A Correct.

22 Q Okay. Now you understand that Christie's came up with
23 five potential alternatives to sale, correct?

24 A Yes.

25 Q But you never talked to anyone at Christie's about these
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 58 of 256

1 alternatives, did you?

2 A No, I did not.

3 Q And before you rendered this report, you didn't speak
4 with Paul Provost about them and he's the man at Christie's
5 who developed these alternatives, did you?

6 A No, I did not.

7 MR. SOTO: Thank you very much.

8 A Sure.

9 CROSS EXAMINATION

10 BY MR. BRILLIANT:

11 Q Good morning, Mr. Plummer.

12 A Good morning.

13 Q I'm Allan Brilliant on behalf of MIDD. I just have a few
14 questions for you. Mr. Plummer, you didn't do a formal study
15 regarding the economic benefits to Detroit of having the DIA
16 open, did you?

17 A I did not.

18 Q And in fact you don't have a degree in urban economics?

19 A I do not.

20 Q And you haven't studied urban settings, have you?

21 A I have not.

22 Q Or municipal finance?

23 A I have not.

24 Q Municipal development?

25 A I have not.

1 Q Municipal economics?

2 A I have not.

3 Q So you wouldn't -- you're not qualified to give an
4 opinion on the effects on the -- on the city of having the DIA
5 -- DIA open, isn't that correct?

6 MR. IRWIN: Objection, Your Honor. Asking the
7 witness to opine.

8 THE COURT: The objection is sustained.

9 Q Mr. Plummer, you have no expertise regarding the economic
10 effects of having a museum open, isn't that right?

11 A I'm sorry, ask the question again.

12 Q That you have no expertise in the economic --

13 THE COURT: Why are you asking this question?

14 MR. BRILLIANT: Excuse me?

15 THE COURT: Why are you asking this question?

16 MR. BRILLIANT: I'm just, you know, impeaching the
17 -- the statements he made earlier about, you know, comparing
18 the city to -- Detroit to Brooklyn. But, you know --

19 THE COURT: That's a totally different matter.

20 MR. BRILLIANT: Okay. I'm finished, Your Honor.

21 THE COURT: All right.

22 MR. BRILLIANT: Thank you.

23 THE COURT: Any further questions for the witness?

24 MR. IRWIN: Am I up?

25 THE COURT: It looks like it.

1 REDIRECT EXAMINATION

2 BY MR. IRWIN:

3 Q Hopefully very briefly, Mr. Plummer. Mr. Soto asked you
4 some questions about your experience with appraisals.

5 A Uh-huh.

6 Q That word was very specific. Do you draw any
7 distinctions in your mind between an appraisal and a
8 valuation?

9 A I mean I think there are official appraisals which are
10 done for specific purposes like insurance valuations and
11 estate taxes and those sorts of things. By design Artvest
12 does not do that.

13 It is not a very revenue generating sort of business. We
14 prefer to do valuations in the context of real world sales,
15 and purchases, and loans where real money is on the table.
16 And we have skin in the game. And we find -- so we do not
17 generally do technical appraisals.

18 Q Does Artvest value art in connection with the services
19 that --

20 A Yes, we do. We value art for our clients in the context
21 of actually making real decisions to buy and sell and spend
22 their money, or make money and/or borrow.

23 Q How about with respect to the team of people that you
24 assembled for the DIA project? Were there appraisers on that
25 team?

1 A Yes, there were. There was Betty Krulik who is actually
2 President of the American Appraisers Association and very
3 highly regarded. Kristin -- Kristin Perry who is also a
4 member of the Appraisers Association of America. And Sabine
5 Wilson also a member of the Appraisers Association of America.
6 And Johann Young who has roughly 18 years experience at both
7 Sotheby's and Christie's.

8 Q And what -- what qualifications were you looking for in
9 connection with the appraisers or specialists that you would
10 recruit for this particular assignment?

11 A I was looking for appraisers or specialists who had real
12 world knowledge of what was going on, what values were, and
13 were not approaching it in a scholarly fashion, but were
14 actually approaching it in a real commercial fashion.

15 Q All right. And Mr. Soto asked you some questions about
16 the immediate liquidation analysis you did and a blockage
17 discount analysis. Do you recall that?

18 A Yes.

19 Q And I think you testified that there were no studies done
20 in connection with that analysis, is that right?

21 A Correct.

22 Q How can you be so confident in your results if there are
23 no studies that were done?

24 A Because of my own experience with -- with -- in the art

25 world of -- of -- of being offered things at blockage -- at
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 62 of 256

1 you know, immediate sale discounts, about my experience in the
2 lending business. That it's just a factor of daily life in
3 the art world, so I didn't need to do a study.

4 Q Did you have real world examples to support your
5 opinions?

6 A Yes.

7 Q And did you describe those?

8 A Yes.

9 Q Mr. Soto asked you some questions about Christie's and
10 Sotheby's willingness to potentially -- potential willingness
11 to accept a sale assignment. Do you recall that?

12 A Yes.

13 Q Was there media coverage surrounding the Christie's
14 agreement to appraise the DIA collection?

15 A Yes, there was and it was quite scathing.

16 Q And how did that impact your opinions?

17 A That was part of my opinion. That if -- if -- if
18 Christie's would receive this degree of negative press on this
19 and knowing the thinking of the Christie's management team and
20 Mr. Pino and how sensitive they are about these things, that
21 if they were receiving this kind of negative press just for
22 the appraisal and the monetization, that they would -- I
23 couldn't imagine given their risk aversion that they would
24 come near selling the DIA collection under any circumstances.

25 Q Okay. And lastly, Mr. Plummer, Mr. Soto asked you some
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 63 of 256

1 questions about the appropriateness of considering some of
2 these discount factors in connection with a -- a loan
3 scenario. Do you recall that?

4 A Yes.

5 Q What happens in an art loan scenario when the borrower
6 does not repay that loan?

7 MR. SOTO: Objection, asked and answered. He's
8 already testified to that.

9 THE COURT: I'll permit it, go ahead.

10 A The lender takes possession of the collateral and sells
11 it. And sells it at his whim and -- and full exclusive
12 control.

13 Q Do you have personal knowledge in your experience of art
14 loans being foreclosed and collateral sold?

15 A Yes.

16 Q Does it happen in the marketplace?

17 A It happens frequently in the marketplace.

18 MR. IRWIN: No further questions.

19 THE COURT: Any further questions of the witness?

20 MR. SOTO: No, Your Honor.

21 THE COURT: Was -- was the -- the name of the
22 organization that you mentioned, the Association of Art Museum
23 Directors?

24 A No, it's the Association of Museum Directors, or it's --

25 I believe it's the AMD.

1 THE COURT: Is that a different organization than
2 the one I just mentioned?

3 A Well, there's the AAA -- there's the Association of
4 American Museums. And then there is the Association of Museum
5 Directors.

6 THE COURT: Okay. So those are two different
7 associations?

8 A They are two different associations. The directors
9 association is the more I would say -- I shouldn't say
10 prestigious, but the more prominent of the two because it is
11 the directors and they govern policy. The other organization
12 is a more -- is a broader museum alliance that includes
13 administrative people.

14 THE COURT: Okay. So let's -- let's focus on the
15 directors association.

16 A Okay.

17 THE COURT: Whatever it's called. That organization
18 -- does that organization have some kind of set of standards
19 and practices, or code of ethics that deal -- or policy that
20 deals with the issue of de-accessioning art works?

21 A They do.

22 THE COURT: Okay. Is that proposed to be in
23 evidence here?

24 MR. IRWIN: It is, Your Honor. It's on our exhibit
25 list and we are -- we are discussing with FGIC right now some

1 new exhibits to come in. I think that's one of the exhibits.

2 THE COURT: Okay. Now let's focus on the other
3 organization which you say is the organization of museums.

4 A Yes.

5 THE COURT: Whatever that's called. Are -- are you
6 familiar with that organization?

7 A I am.

8 THE COURT: Does it likewise have a similar kind of
9 statement, whether it's a statement of practice, or ethics, or
10 policy on de-accessioning?

11 A I -- they may have. I don't know because the AMD really
12 is the -- kind of the governing body in this context. I'd
13 really refer to their rulings.

14 THE COURT: Okay. All right. That's all I have.
15 You may step down, sir.

16 A Thank you.

17 THE COURT: And you're excused.

18 A Thank you.

19 (WITNESS MICHAEL PLUMMER WAS EXCUSED AT 9:54 A.M.)

20 THE COURT: Okay. So let's take our morning recess
21 at this time and reconvene at ten minutes after 10:00.

22 THE CLERK: All rise. Court is in recess.

23 (Court in Recess at 9:54 a.m.; Resume at 10:10 a.m.)

24 THE CLERK: All rise. Court is back in session.

25 You may be seated.

1 MR. O'REILLY: Good morning, Your Honor. Arthur
2 O'Reilly with Honigman, Miller, Schwartz, and Cohn for the
3 Detroit Institute of Arts.

4 Before we call the next witness, Your Honor, I wanted to
5 bring the Court up to date on some of the document admission
6 issues that we've been in discussion with the objectors. We
7 spent some -- as you might guess, in an issue like this
8 there's a lot of old documents and so a lot of documents have
9 already come in. We've also had subsequent discussions about
10 admitting additional documents.

11 If it makes sense for the Court, I can read into the
12 record those that we've reached some agreement upon and then
13 have them also entered in the JFPTO, whenever the next version
14 of that is -- is filed.

15 THE COURT: Okay, go ahead, sir.

16 MR. O'REILLY: The -- the parties have agreed that
17 -- well, I should say this. With certain parties settling
18 including Syncora, some of those objections have gone away.
19 And so those should come into evidence and those are 284, 293,
20 295, 300, 341, 343, 344, 350, 351, and 543.

21 In addition we've also reached some stipulations to agree
22 to admit quite a number of additional documents including 272,
23 273, 279, 282, 283, 285, 288, 289, 290, 297, 302, 308, 352,
24 392, 393, 394, 437, 449, and 704.

1 3243, 3263, 3265, 3270, 3273, 3302, 3310, 3313, 3314, 3923,
2 and 1893.

3 I'm sorry, and there are actually some more. I'm sorry,
4 there's a lot of these, but it's better than dealing with them
5 at the end.

6 THE COURT: All right. Go ahead.

7 MR. O'REILLY: 3128, 3163, 3215, 3278, 3282, 3285,
8 3286, and 301. And I think -- I would like to move them into
9 evidence and I believe Mr. McCarthy --

10 THE COURT: Is there any objection to the admission
11 of those documents in evidence?

12 MR. MCCARTHY: Your Honor, Ed McCarthy on behalf of
13 FGIC with Weil, Gotshal. With respect to the first category
14 of documents, that were listed where perhaps Syncora had
15 objected, I don't have those on my list. I just don't have a
16 list regarding that.

17 If the Court -- if it's okay with the Court, we would
18 like to double check that to make sure we don't have an
19 objection to those. With respect to all remaining documents
20 other than 704, I have those on my list as well as Mr.
21 O'Reilly's so no objection.

22 THE COURT: All right. Let me just go ahead and
23 admit all of those into evidence now. If there is a document
24 on that list that you believe shouldn't be on that list, bring
25 it to my attention after lunch.

1 MR. MCCARTHY: We will, Your Honor.

2 THE COURT: And we'll get it resolved.

3 (City's Exhibits 272, 273, 279, 282, 283, 284, 285, 288,
4 289, 290, 293, 295, 297, 300, 302, 308, 341, 343, 344, 350,
5 351, 352, 392, 393, 394, 437, 449, 543, and 704. FGIC's
6 Exhibits 1893, 3085, 3086, 3108, 3128, 3163, 3215, 3224, 3239,
7 3243, 3263, 3265, 3270, 3273, 3278, 3282, 3285, 3286, 3302,
8 3310, 3313, 3314, 3923, and 301 were stipulated and admitted)

9 MR. O'REILLY: Thank you, Your Honor. We'll call
10 Ms. Annemarie Erickson.

11 THE COURT: Please raise your right hand.

12 (WITNESS ANNEMARIE ERICKSON WAS SWORN)

13 THE COURT: Please sit down.

14 DIRECT EXAMINATION

15 BY MR. O'REILLY:

16 Q Good morning, Ms. Erickson.

17 A Good morning.

18 Q Thank you for being here today. Would you please state
19 your name?

20 A My name is Annemarie Erickson.

21 Q And where were you born?

22 A I was born in Highland Park, Michigan.

23 Q Did you grow up there as well?

24 THE COURT: If you'd try to speak more into the

25 microphone. It may be challenging for you, but please try.
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 69 of 256

1 MR. O'REILLY: I will do my best, Your Honor.

2 THE COURT: Thank you.

3 Q Where -- where did you grow up?

4 A I grew up in the City of Detroit. My father was a city
5 employee.

6 Q Okay. And do you live in Detroit now?

7 A No, I don't. I live in Beverly Hills, Michigan.

8 Q Okay. And are you employed by Detroit -- the Detroit
9 Institute of Arts which has been called here the DIA Corp.?

10 A Yes, I am.

11 Q Okay. And what is the DIA Corp.?

12 A The DIA Corp. is a 501(c)(3) non-profit organization that
13 operates the Detroit Institute of Arts.

14 Q And am I correct that you are the executive Vice
15 President and Chief Operating Officer of the DIA Corp.?

16 A That's correct.

17 Q Okay. And how long have you served in that role?

18 A Since 2008.

19 Q And prior to that did you have a different role?

20 A I did. I was Vice President of marketing and museum
21 programs for the museum.

22 Q Okay. And when did you first become employed by the DIA
23 Corp.?

24 A February 1st, 1999.

25 Q Okay. Were you hired into that Vice President role?

1 A It was the -- the same role under a different title.

2 Q Okay. And -- and when did you become the COO and -- and
3 executive VP?

4 A In 2008.

5 Q 2008. What are your duties and responsibilities as COO
6 and executive VP?

7 A They're rather broad. I supervise several departments
8 directly. Building operations is one of them. Building
9 operations includes security, visitor services, those are the
10 front line people, the ticket takers and coat checks,
11 volunteer services, and building maintenance.

12 I also supervise the development department which is
13 responsible for all the museum's fund raising. I supervise
14 organizational development and human resources. I supervise
15 the exhibitions department which is responsible for the
16 logistical side of all of the exhibitions that the museum
17 presents.

18 I supervise marketing and communications which also
19 includes the web site and social media. I supervise public
20 programming which is all the programming that the museum does
21 outside of direct educational programming.

22 Q Okay.

23 A I think that's it.

24 Q Thank you. Do you have any role with respect to museum
25 governance?

1 A I do. I am primarily the primary person responsible for
2 board relations. That means that I plan five annual board
3 meetings. I do the agendas, I pull together the supporting
4 materials, I do all of that.

5 I also attend all board committee meetings. There are 11
6 standing committees and sub committees. I also have direct
7 responsibility for the governance and nominating committee and
8 that is the committee that selects -- identifies and selects
9 potential candidates for board membership.

10 Q Okay. And do you have any role with respect to donors or
11 donor relations?

12 A Well, I supervise the development committee. So I have a
13 direct role in that sense. But I would say that everything we
14 do is donor relationship.

15 Q Do you have any role with respect to museum finances?

16 A I do. I -- with working with the CFO and the director,
17 we put together a budget for the museum every year. We manage
18 that budget. I sit on the investment committee and look at
19 the investment prospects of the museum and manage that as
20 well.

21 Q Do you have any role with respect to the museum's art
22 collection?

23 A My major role is in connection with the exhibitions
24 department. We, as I said, do the logistical side of the

25 exhibitions. That goes from the inception of an idea which is
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 72 of 256

1 usually presented by a curator to a group of people.

2 The -- the idea is approved and then we go through a
3 series of steps over several years that results in an
4 exhibition. So I have a great deal of direct contact with the
5 curatorial department in that sense.

6 Q Is there something called the collection committee as
7 well?

8 A Yes. I attend the collections committee. The
9 collections committee is a board committee that is charged
10 with accepting gifts into the collection, whether through
11 purchase, gift, or bequest. And also charged with
12 de-accessioning works of art from the collection.

13 Q Is there something called the steering team?

14 A Yes. There is a group called the steering interpretive
15 team which I sit on. I have sat on that group since the early
16 two thousands.

17 The group was first formed when we were doing the
18 reinstallation of the entire museum collection. And we were
19 divided into teams. And the teams were charged with
20 developing the themes and the ways that those stories would be
21 told using objects in the collection.

22 Occasionally a team would not be able to come to
23 resolution on -- on an issue and so we formed the steering
24 interpretive team and it was our job to mediate those issues

25 among the teams.

1 When the reinstallation was finished we decided that
2 there was still a role for the steering interpretive team. So
3 the steering interpretive team now approves all of the
4 exhibitions on the schedule, approves other displays of art,
5 approves works -- work in the permanent galleries, the
6 permanent collection galleries. So we're deeply engaged with
7 the display of art in that team.

8 Q Thank you. Are you familiar with the term encyclopedic
9 museum?

10 A Yes.

11 Q What does that mean?

12 A The -- an encyclopedic museum displays works of art from
13 early history through contemporary times of all cultures or of
14 most cultures.

15 Q Is the museum -- is the Detroit Institute of Arts museum,
16 is that an encyclopedic museum?

17 A Yes, it is.

18 Q Okay. Would you consider it one of the top museums of
19 that kind in the United States?

20 A Based on collection we consider ourselves to be one of
21 the top six museums in the United States.

22 Q Do you know how many visitors came to the museum this
23 past year?

24 A Approximately 610,000.

25 Q Okay. Will you have the same number approximately this
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 74 of 256

1 year?

2 A We are actually on track to do better than that this
3 year.

4 Q Does the museum have members?

5 A Yes. The museum has about 30,000 member households right
6 now.

7 Q And what is a member?

8 A Members are sort of the foundation of our supporter base.
9 They purchase a membership in the museum that ranges from a
10 low of about \$40,000 to a high annually of \$25,000. These
11 people purchase those memberships first of all to support the
12 museum, but also because they get benefits from their
13 membership. Free admission is a benefit as is free exhibit
14 tickets. They get discounts in the restaurants and store.

15 Q Okay. Are they an important part of your donor base?

16 A They're absolutely critical to us. Members are the first
17 people who attend exhibitions. They're the ones who attend
18 the museum most frequently, two or three times a year. They
19 are our closest family.

20 Q Does the museum have volunteers as well?

21 A We do. We have about 700 active volunteers.

22 Q And what do they do?

23 A The volunteers do a wide variety of things. They staff
24 our information desk. They support our security guards by

25 walking through the galleries. We call those gallery service

1 volunteers.

2 They do our public tour programs. Some volunteers are
3 trained to help dust the treines and works of art in the
4 collection. We -- it is not an exaggeration to say that we
5 couldn't really operate without our volunteers.

6 Q And you have employees as well of course?

7 A We do.

8 Q How many employees do you have?

9 A About 300 full and part time.

10 Q Okay. Does the museum provide any benefits or -- and
11 services to the community?

12 A Well, by its very existence the museum provides a benefit
13 to the community. We hold our -- our collection in trust for
14 the community and we provide a number of programs in a number
15 of different areas from education, to social services, to
16 professional services.

17 Q Could you give the Court a thumbnail sketch of the type
18 of educational programs that the museum provides?

19 A I will. It's -- we -- we provide a lot of them. Perhaps
20 we're best known for school programs.

21 We had about 60,000 students come through the building
22 last year. Some on guided tours that speak to different areas
23 of the curriculum. Those range from art to history, to social
24 sciences to Spanish language.

25 Other students came through on self guided tours. We

1 provide on line curriculum and the teachers use those and can
2 guide their own students through the building.

3 We also provide a longstanding program in the museum and
4 one we're very proud of it's called the art discovery program.
5 That program was really started when schools started to lose
6 their entire art programs.

7 And it runs annually in three or four schools. It
8 depends on -- on who is ready to do it. And we take a group
9 of third to fifth graders, depending again on what the school
10 needs, through the museum for an intense period of time. They
11 come in once a week for five or six weeks and they tour the
12 galleries and they get a chance to work in our art making
13 studio.

14 And that really is the critical moment for them because
15 they don't have art programs in their schools. We've been
16 doing art discovery for years and years. It's a long
17 established program we're very proud of it.

18 We also provide services to teachers. This time of year
19 we are doing teacher open houses. Teachers are welcome to
20 come in to the museum for free. They can go on mini tours so
21 they can see what we offer their students. We give them
22 educational materials and we talk with them about how we can
23 serve them better.

24 Q Do you do any programs for non-student age but more the
25 adult range?

1 A Yes, we do. We believe that learning is lifelong. And
2 we believe the museum helps facilitate that. So we do a
3 number of adult programs.

4 We do lectures. Some very serious art based lectures,
5 other less serious, more pop culture lectures. We have a film
6 program, art films and foreign films that is longstanding and
7 we often do discussions after the films.

8 We have adult classes. You can take an art making class
9 as an adult. We do tours for adults on parts of the
10 collection. We have a book club. We have all kinds of things
11 for adults.

12 Q I think you also mentioned social services type programs.
13 Can you explain to the Court in sort of a broad overview what
14 -- what you meant by that?

15 A Since its inception the museum has been located in the
16 City of Detroit. And we're very conscious of the needs of our
17 community.

18 And so we do a number of social services programs with
19 different organizations throughout the city. Basically they
20 run through our art studio because we believe that creating
21 art is a good outlook for people. So we've done programs with
22 the Dingell Veterans Hospital, serving veterans with PTSD.

23 We've done programs with the Piquette Center which is a
24 place for homeless veterans. We do work with Mariner's Inn

25 and the Harbor Lights Center which serves men recovering from
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 78 of 256

1 addiction issues.

2 In the past we've done some work with the Children's
3 Center which is a -- a social service organization that serves
4 troubled children.

5 So we have a -- a pretty wide ranging program there. And
6 we also do less intense programs, but for instance we are in
7 Children's Hospital every week and we do bedside art making
8 with kids who are stuck in hospital beds for long periods of
9 time.

10 And as a result of the success of that program, we begin
11 working with their dialysis unit for children who have to come
12 in and have dialysis every week. We do a photography program
13 and have done small exhibitions in the hospital from that
14 program.

15 Q Does the museum do anything -- yes, feel free by the way,
16 to have a drink while we're doing this. Does -- does the
17 museum provide any services to other art museums or other
18 institutions of that kind in the community? Sure.

19 A Sorry, we have a lot to talk about. Yes, we do. We are
20 the largest museum in Michigan and we have greater resources
21 than most of our colleagues in the museum field. So we feel a
22 great obligation to -- to help them out.

23 And we do that in a variety of ways. One of course is by
24 loans from collection. We have a very rich collection and we
25 can often help smaller museums by loaning them objects for

1 exhibition, or sometimes for long term loans in their
2 permanent collection galleries.

3 We also have a fully equipped conservation lab in the
4 museum. So if another museum has a work of art that requires
5 some kind of treatment or repair, they can call us and we can
6 talk with them and see if we can help them out on that.

7 And then we do just general professional development
8 programs. Our education department is noted for its
9 interpretation methods. And we have shared those with others.
10 We have also shared our volunteer management system because we
11 have 700 volunteers, we're -- we're pretty good at managing
12 them after all this time. So we provide a number of
13 professional services. We're active with the Michigan Museums
14 Association and other professional organizations.

15 Q If the museum didn't provide those services would these
16 other museums in -- in the state have an ability to get those
17 services?

18 A I think they would, but they probably would not get it at
19 little or no cost which is generally what we provide.

20 Q Okay. Does the museum do anything to sort of broaden its
21 reach or -- or to access more or present more of its artwork
22 to the community?

23 A We do. We --

24 Q Can you tell the Court a little bit about that?

25 A Absolutely. We -- we feel very strongly that even though
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 80 of 256

1 we're located in the Cit of Detroit, by virtue of the way our
2 region has spread, we also serve the suburbs as well.

3 And one way that we decided that we would better engage
4 the suburban community is through a program called inside out.
5 We started it on the museum's 125 anniversary as kind of a low
6 cost way to celebrate our anniversary.

7 And we began producing high quality reproductions of some
8 of the masterpieces in the museum collection. And we've
9 framed them beautifully and then we hung them in unexpected
10 places in the tri-county area.

11 Q What do you mean by that, unexpected places?

12 A You might be walking down a trail in a park and all of a
13 sudden you'd see a beautifully framed photograph. You might
14 be walking through an urban area and see a picture on a wall
15 in an alley. Just places where you wouldn't ordinarily expect
16 to see a beautifully framed work of art.

17 The program was so popular after our 125th anniversary
18 that we continued it and it is now I believe in it's fifth
19 year. And it shows no sign of slowing up. And we've changed
20 it up a little bit so that we now do it in communities.

21 So a community will get seven or eight works of art. And
22 we work with the community to do programming around that. We
23 do things like walking tours or bike tours. In the fall we've
24 done Halloween tours. We do all kinds of things to better
25 engage people with the art.

1 But it's important to remember that looking at a
2 reproduction is not enough. And so every work of art carries
3 a tag that has a small fact about the work of art and
4 encourages people to come back to the museum to see the
5 original. Because you cannot replace that primary experience.

6 Q Are there other institutions in this community that are
7 similar to the museum?

8 A Detroit is really blessed with a wonderful cultural
9 community that I hope everyone takes advantage of. We have
10 the Michigan Opera Theater, the Detroit Symphony Orchestra.
11 Right behind our museum we have the Charles Wright museum of
12 African American History. We have the Michigan Science
13 Center. And -- and the Historical Museum. And that's just in
14 the downtown area. So I think that we're -- we're very
15 fortunate in -- in having all those institutions.

16 Q Are there other opportunities for people in this
17 community to benefit from the same type of programs and
18 services that the museum provides?

19 A I think there are, but perhaps I'm -- certainly I am
20 biased. But I think we have the opportunity to do those
21 programs with greater richness and depth principally because
22 we have such an amazing collection.

23 Q What is the -- the annual budget of the museum?

24 A Our annual budget this fiscal year is \$32,000,000.

25 Q And how are the operations funded?

1 A We are lucky enough currently to have a tri-county
2 property tax that goes to museum operations. That accounts
3 for about \$22,000,000 annually, about 75% of the budget. The
4 other 10,000,000 is fund raised primarily.

5 Q Okay. And -- and when you say fund raised, what -- what
6 do you mean by that?

7 A We go out and raise funds from individuals, corporations,
8 and foundations to support the museum operations. There's a
9 very small revenue generating line as well, but we are a
10 non-profit organization. We don't generate very much
11 revenues, less than 3% of the budget.

12 Q Okay. And does the city provide your operational
13 fundings?

14 A Not currently.

15 Q And has that always been the case over the course of say
16 -- well let me -- let me step back. There -- there is an
17 operating agreement, is there not, between the city and the
18 DIA Corp.?

19 A Yes.

20 Q And how long has that been in existence?

21 A It was finalized in 1997. I believe it was signed
22 formally in 1998.

23 Q Okay. So has the city during that period ever provided
24 any funding to support operations?

25 A Periodically the city provided some funding. I think it
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 83 of 256

1 might have amounted to a few million dollars over that time.

2 Q Okay. Would you mind pulling up Exhibit 301?

3 MR. O'REILLY: And this is one of the ones that we
4 had reached agreement on, Your Honor. If I may publish it to
5 the witness.

6 Q Do you recognize this document, Ms. Erickson?

7 A Yes, I do.

8 Q Okay. If you could go to the second page of this,
9 please.

10 A Uh-huh.

11 Q Does this document reflect where and how much the city
12 has provided over the period of this operating agreement?

13 A Yes, it does.

14 Q Okay. Where -- where can I find that?

15 A If you look at the second column in city operations
16 support.

17 Q Okay. So it's approximately -- down at the bottom it's
18 approximately 1.3% of the operational support over the period
19 of time from '98 until the present?

20 A That's correct. Not quite \$6,000,000.

21 Q You've talked a little bit about donations of funds. Are
22 those donations made to the city?

23 A No, they're made to the DIA.

24 Q You can take that down. Thank you. You spoke about the
25 county millage. And I think you said that about twenty-one or

1 22,000,000 came from the county millage?

2 A A little over twenty-two.

3 Q Okay. What's the duration of time in which you will have
4 that millage available?

5 A We have ten years of millage availability. And then we
6 can go back and ask for renewal.

7 Q Were you involved at all in the -- the effort to have the
8 millage passed?

9 A Yes, I was.

10 Q Tell the Court a little bit about your involvement.

11 A I was part of the group that formulated the millage
12 strategy. We looked at a number of options to stabilize the
13 museum's finances. And as much of a long shot as it seemed at
14 the time, we decided that going for a property tax was
15 probably our best option.

16 So from the time that we began approaching the state
17 government for enabling legislation through the actual vote in
18 August of 2012, I was part of the core team that developed and
19 implemented the millage strategy.

20 Q And during that -- so there were three counties, correct?

21 A Yes, Wayne, Oakland, and Macomb.

22 Q And did you work with any representatives of those
23 counties?

24 A Yes. It was a lot of discussion and meetings to talk to
25 them about why we needed the millage and what the millage

1 would do. I was primarily engaged with Oakland and Macomb
2 counties and had some engagement with Wayne, but not as much.

3 Q Were there any concerns associated with the millage?

4 A Yes, there were.

5 Q Tell the Court a little bit about what those concerns
6 were.

7 A There were two concerns primarily. One was that the --
8 the property tax was designed to support operations at the
9 museum. And the county commissioners were very concerned that
10 that be the only thing that those tax dollars be used for,
11 that they go directly to the museum and be dedicated to the
12 museum. So safeguarding those funds was a major concern for
13 them.

14 The second concern as I said, we were getting this
15 legislation in 2011, 2012 and it was no secret that the city
16 was not in great financial shape. And so several of the
17 county commissioners raised the issue of the possibility of a
18 sale of art.

19 Q But those concerns were addressed?

20 A Yes, they were.

21 Q And the -- the millage was passed?

22 A Yes.

23 Q Okay.

24 A Heavily.

25 Q So how were the concerns addressed?

1 A We set it for the -- in the first case we set up in each
2 county an art institute authority. That authority actually
3 contracts with the DIA to transfer those tax funds. The
4 actual transfer is done by the county treasurer, but all the
5 other work goes through the authority and the DIA.

6 The funds can only go to the DIA. If they go anywhere
7 else, the county has a shut off valve.

8 And in the second case, we worked very closely with Mayor
9 Dave Bing who was Mayor of the City of Detroit at the time.
10 And he was very supportive of our efforts to get a millage to
11 support the museum. And he wrote a letter to the county
12 commissioners and in that letter he stated that the city held
13 the collection in trust for the public and art would not be
14 sold.

15 MR. MCCARTHY: Objection, Your Honor, move to strike
16 the testimony as hearsay.

17 THE COURT: Overruled.

18 Q Could you pull up Exhibit 344? And does this appear to
19 be the letter you just spoke to?

20 A Yes, it does.

21 Q Okay. Do you know which paragraph in there that you
22 referred to that talked about the protection for the museum
23 art collection?

24 A It's the second to last.

25 O Okay. Would you mind blowing that up, please? And so is
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 87 of 256

1 this the language that you spoke of?

2 A Yes, it is.

3 MR. MCCARTHY: Your Honor, we object. A continuing
4 objection based on hearsay. This is a statement being offered
5 to prove the truth of what is in the statement from Mayor Bing
6 in an undated letter and an exhibit that is not in evidence.

7 THE COURT: The objection that the letter is not in
8 evidence is sustained.

9 MR. O'REILLY: It actually is, Your Honor. It's one
10 of the stipulated -- it's one of the documents that Syncora
11 had objected to but they're no longer in. FGIC had not raised
12 a hearsay objection, so I do believe it comes in. And in any
13 event it falls into an exception of the statement of intent
14 regarding what the city would do.

15 MR. MCCARTHY: Your Honor, those are two separate
16 things. But if it's coming in simply to establish that the
17 DIA had some expectation and based on this statement, but if
18 it's coming in to prove the truth of what the writer of this
19 letter states, then it is certainly hearsay and cannot come
20 into evidence.

21 MR. O'REILLY: Your Honor, it's --

22 THE COURT: I assume it's being offered to
23 demonstrate the statement that the Mayor made to the counties,
24 to the recipients of the letter. All right. For that purpose
25 it is not hearsay and is therefore admissible. So you may

1 proceed.

2 MR. O'REILLY: Thank you. And you can take that
3 down.

4 Q I'd like to talk a little bit about the museum art
5 collection now if I could. You're familiar with it, I'm sure,
6 correct?

7 A Yes.

8 Q Okay. Are you familiar with the Diego Rivera murals?

9 A Yes, I am. The Rivera murals are probably what the DIA
10 is best known for though we have many --

11 Q Why don't you pull up 703 for me, demonstrative 703.

12 A You should get to see them. We are known for many
13 things.

14 Q Does that -- does that appear to be them?

15 A Yes.

16 Q Okay.

17 A This is Rivera court. These are the Detroit industry
18 murals by Diego Rivera. Rivera considered them to be one of
19 his finest works of art.

20 And we really consider them to be the heart of our
21 museum. I don't know that there is another work of art that
22 speaks so deeply and closely to what a city is and does as
23 this work does.

24 (City Exhibit 703 was identified)

25 Q How -- how is -- how are these murals financed?

1 A At the time the museum had a very visionary director,
2 William Valentiner and he saw Rivera's work and was very
3 interested in it.

4 And the museum also had a major and very wonderful patron
5 in Edsel Ford. And Edsel Ford offered to fund these murals.
6 Originally Rivera was only contracted to do the two large
7 walls that you see, but he became so enthralled with the
8 project that he presented a program for the entire court. And
9 Edsel Ford extended his funding to cover the entire court.

10 Q Okay. And is Mr. Ford featured somewhere in -- in those
11 murals?

12 A He is. You can't see him in this picture, but there is a
13 panel that features both Director Valentiner and Edsel Ford.

14 Q Okay. Thank you. Could you pull up demonstrative 702,
15 please? Do you recognize this image?

16 A I do.

17 Q Okay. What is it?

18 A This is the Postman by Vincent Van Gogh.

19 (City Exhibit 702 was identified)

20 Q Okay. Can you tell me a little bit about that work?

21 A This is a major painting in our impressionist collection.
22 It was given to the museum by Josephine Ford who was another
23 incredibly generous supporter of the museum in her life.

24 MR. O'REILLY: Your Honor, I'd move to introduce

25 these as demonstratives.

1 MR. MCCARTHY: No objections for demonstrative
2 purposes, Your Honor.

3 THE COURT: They're not already in evidence?

4 MR. O'REILLY: These are -- these are -- these
5 images are not, no. But they do appear elsewhere in documents
6 that have already been admitted.

7 THE COURT: Okay. They are admitted.

8 (City's Exhibit 702 and 703 were admitted)

9 THE COURT: By the way the exhibit sticker is not on
10 the original, is it?

11 A I hope not.

12 Q A lot of art jokes this week. How many objects are in
13 the museum art collection?

14 A Approximately 60,000.

15 Q And how were they acquired?

16 A Primarily through gift or bequest. Some were purchased
17 by the museum but the vast majority of works at American
18 museum -- in museums come to the museums through gift or
19 bequest.

20 Q Okay. And you said I think purchased as well. Where did
21 the -- those funds come from?

22 A Most of -- all of the funds come from donors who restrict
23 those funds for the purchase of art.

24 Q Okay. Did -- did there come a time when the city did
25 appropriate funds to acquire artwork as well?

1 A Yes. At one point in time early in the museum's history.

2 Q Okay. Do you know around when those appropriations
3 ceased?

4 A I believe it was in the early 1950's. I'm not certain of
5 the exact year, 1954 perhaps.

6 Q Okay. And how many of the pieces of art in the DIA
7 collection were acquired with using city funds?

8 A Approximately 2,800.

9 Q So would it be fair to say the remainder was either
10 acquired by bequest, or by gift, or by purchase using donated
11 funds?

12 A Yes. And I would say that even some of the works that
13 are credited to the City of Detroit, the funds were commingled
14 from a very generous group of donors at that time as well.

15 Q And you talked a little bit about donated funds. And I
16 think you said some of them are restricted. What -- what did
17 you mean by that?

18 A The donor will set aside a fund and restrict the use of
19 that fund. And also any income that is earned from that fund
20 is similarly restricted. Generally what they will do is
21 restrict the use of the fund to purchases of works of art from
22 an area that they're interested in.

23 So it might be American art, it might be European art, it
24 could be African art, it could even be as specific as a time
25 frame, or a type of work like impressionist art.

1 Q Okay. And are those accounts maintained by the museum?

2 A Yes, they are.

3 Q Are they city accounts?

4 A No, they're accounts with the DIA Corp.

5 Q Ms. Erickson, are you familiar with a system known as TMS
6 or The Museum System?

7 A Yes, I am.

8 Q And what is that?

9 A The Museum System is a collections management data base
10 that we use to track the collection.

11 Q And who -- who might use that system?

12 A It's primarily used by the registrars. They are
13 responsible for collections management in -- in that sense.
14 But it's also used by curators and -- and others.

15 Q Do you -- do you have occasion to use it as well?

16 A I do, but not frequently.

17 Q Okay. Have you ever seen a print out from TMS?

18 A Yes, I have many times.

19 Q Would you mind pulling up trial Exhibit 295, please?

20 Okay, if you could go to the next page. Try a different page.

21 Let's find one with an image on it. One more. There we go.

22 Does this appear to be a print out from the TMS system?

23 A Yes. This is a basic print out.

24 Q Okay. Highlight a couple of those there. And will this

25 tell you how a work became part of the collection?

1 A Yes. You can see there's a line that says gift of
2 Frederick Sterns.

3 Q Okay. So this would have been a gift to the museum of --

4 A Arrowheads, battle axe.

5 Q A battle axe. Okay. Are there other -- and I'm sorry,
6 and does that have a name, that line that says gift of
7 Frederick Sterns?

8 A Yes. That's known as the credit line.

9 Q Okay. And -- and does -- does that information appear
10 anywhere else?

11 A Yes. We honor donor gifts to the museum publicly when
12 those works are on display. And we use what we call a
13 tombstone label that appears next to each work of art. It
14 contains the same basic information and the credit line.

15 Q I see. Thank you.

16 A And it also would appear in numerous other documents in
17 the museum.

18 Q Oh, I see.

19 A Publications, things like that.

20 Q I see. So it's fairly common for you to have a credit
21 line that reflects how it comes into the collection?

22 A It -- yes, absolutely.

23 Q Okay. Ms. Erickson, are you familiar with the accession
24 and deaccession process?

25 A I am.

1 Q So, I want to break those two up and start with
2 accession. What does accession mean?

3 A Accessioning is the formal process through which objects
4 come into the museum's collection.

5 Q So can you explain for the Court a little bit about how a
6 donated work might come into the collection?

7 A Donated works are generally the result of a long
8 cultivation period between the museum and a donor. The donor
9 who give works of art to the museum are obviously art
10 collectors, they're familiar with the museum, they know many
11 people in the museum.

12 They probably have developed a relationship with the
13 curator or the director, or one of the development officers.
14 So that relationship matures over time until the donor is
15 prepared to actually make the gift to the museum. At that
16 point in time we enter into a deed of gift with the donor.

17 Q Okay. And are all objects brought to the museum accepted
18 into the collection?

19 A No, I would say that we're very particular about what we
20 accept.

21 Q And why is that?

22 A Because it's our job to steward the collection. And
23 stewarding the collection means that we accept only the finest
24 when we can.

1 we have accepted a donor's entire collection because there
2 might be one or two really fine works in that collection that
3 we would like to have and the rest of the collection comes in
4 as well and is accessioned. But for the most part we're --
5 we're very particular about what we accept.

6 Q And are these donations to the city, or -- or to the DIA
7 Corp.?

8 A Oh, they are to the Detroit Institute of Arts.

9 Q By being accepted into the museum art collection, does
10 that impose any duties or -- or responsibilities on the
11 museum?

12 A It imposes many.

13 Q Can you tell the Court a little bit about what that is?

14 A Certainly. When we take a work into the collection we
15 agree to steward that work of art. Possibly in perpetuity,
16 not always, but possibly.

17 That means that we care for it, that we display it when
18 appropriate, that we do appropriate scholarly research on it,
19 and it comes into the museum under the umbrella of protecting
20 it for the public. We operate in public trust and this work
21 comes in to benefit the public.

22 Q You also -- you also said you're familiar with the
23 deaccession process. What's -- what is a deaccession?

24 A The reverse. The deaccessioning process is the sale or
25 release of a work of art from the museum's collection, the

1 formal process.

2 Q And why would the museum have cause to do that?

3 A Well, as I said, we are stewards of the collection. And
4 prudent collection management dictates that occasionally you
5 look at the collection, actually it's done on an ongoing
6 basis, less formally. And decide what belongs in the
7 collection, what continues to belong in the collection, what
8 might not be of as much use in terms of telling the stories
9 the museum wants to tell to the public, and fashions change,
10 tastes change, particularly in the contemporary art area. So
11 you might decide that it is a better use of storage space and
12 of museum staff effort to deaccession a work of art.

13 Q All right. And can you give us a thumbnail sketch about
14 how that deaccession process works?

15 A It's a very rigorous process because accessioning is a
16 rigorous process. And you're unwinding that process. But
17 essentially what you do is you begin first with research.

18 The curator identifies the work of art that he or she
19 would like to deaccession and then they begin to research
20 that. And that means going through any number of files in the
21 museum.

22 They would probably start in the registrar's office with
23 the object files. They would go to the donor files. They
24 might go to the development office to see if there were other
25 donor files there. Every curatorial department keeps

1 curatorial files. They would likely go through there.

2 If it's a work that came into the collection years ago,
3 they might go into the archives and look at director's files.
4 So there are a number of things to do.

5 That's to determine if there are any other restrictions
6 beyond our umbrella restriction of holding works in the public
7 trust. Once that's satisfied, if the donor is still living,
8 we would contact the donor and let them know that we are
9 considering deaccession or moving through that process. And
10 if the donor is not living, we would attempt to contact the
11 donor's heirs, either again directly by phone, or by
12 registered mail.

13 Once it's gone through that process the deaccession works
14 are presented to the collections committee and they must
15 approve the deaccessioning as must the board of directors.

16 Q And if it's approved, then what happens?

17 A Then we contact an auction house and the work is offered
18 for sale.

19 Q Okay. And if it is in fact sold, what happens to the
20 proceeds from the sale?

21 A Those proceeds come back to the museum. They are used to
22 purchase another work of art in the department where the
23 deaccessioning occurred. So if it was the American art
24 department, it would go back to American art. And when

25 another work is bought with those proceeds, the donor is

1 listed in the credit line and the technical term is in
2 exchange or by exchange.

3 Q Okay. And -- and I just want to be clear. So the
4 proceeds come back. Are they kept in an account?

5 A Yes, they are.

6 Q Until they're redeployed if you will and -- and
7 re-credited to a donor?

8 A Yes.

9 MR. MCCARTHY: Objection, Your Honor, leading.

10 THE COURT: Sustained.

11 Q Are those accounts DIA Corp. accounts?

12 A They are DIA Corp. accounts assigned to the relevant
13 department of art.

14 Q Now the process that you have described for accession and
15 deaccession, is that set forth anywhere in any policies?

16 A Yes. It's detailed in our collections management policy.

17 Q Okay. Could you pull up trial Exhibit 267, please? All
18 right. Does this appear to be the collection management
19 policy?

20 A Yes.

21 Q Okay. Thank you. And does that provide additional
22 detail on the process that you just described? Okay.

23 A It's fairly exhaustive, yes.

24 Q So does the DIA Corp. or the museum have any

25 responsibilities or duties respect to the museum collection as
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 99 of 256

1 a whole?

2 A Yes, we do. We hold the collection in trust, we steward
3 it, we care for it, we display it.

4 Q And -- and does that involve -- what does that involve
5 exactly?

6 A It involves bringing works of art into the collection.
7 It involves letting works of art out of the collection. It
8 involves the display of the works either in the permanent
9 collection galleries or through the exhibition programs. It
10 involves scholarly research on the works using them in
11 exhibitions, promoting the works.

12 Q And for whose benefit is this done?

13 A This is done entirely for the benefit of the public. It
14 is absolutely foundational to museums. It is the core of what
15 we do. That we hold our collections in trust for the public.

16 When the DIA was facing dire financial circumstances, we
17 never considered selling works of art to prop up the
18 operations budget. It was always find another way because
19 those works are held in trust.

20 Q And the DIA does go out and solicit gifts, correct?

21 A Yes, we do.

22 Q Okay. Does it do it to benefit itself?

23 A No. We do it to benefit the public. We -- everything we
24 do is really for the public's use of the museum.

25 Q So you've talked a little bit about the fact that you

1 believe it's held in trust.

2 A Yes.

3 Q Okay. Is that set forth in any documents in the museum?

4 A Dozens of them. You can go back to the founding of the
5 museum, the documents that -- around the founding of the
6 museum in 1885 and they talked then about the fact that they
7 were formulating the museum for the public. It's carved in
8 the front of our building, dedicated to the citizens of
9 Detroit for the enjoyment and knowledge of art.

10 It's again reaffirmed in the 1919 documents that
11 transferred responsibility for the museum from the founding
12 members to the City of Detroit. It's in dozens of board
13 minutes, in director's files.

14 Q So -- so are there any documents that you work with on a
15 day to day basis that support this trust responsibility?

16 A The document on the screen, the collections management
17 policy.

18 Q Could you turn to Page 11 of that document, please? And
19 if you could highlight 5-A the first two lines there. Thank
20 you. And can you tell me where -- where we might find that in
21 this paragraph?

22 A Second sentence.

23 Q Okay. What does that say?

24 A In considering objects or groups of objects, the museum

25 must be ever aware of its role as a trustee of the collection
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 101 of 256

1 for the benefit of the public.

2 Q When donors give are they told that the city can
3 liquidate or use artwork for whatever purpose they want?

4 A Would they?

5 Q Are they told -- are donors told this?

6 A No. That -- that the implicit assumption is that they
7 are giving to be held by the museum in trust.

8 Q Are you aware of any public statement by the city where
9 it advised the public that it had this ability to take gifts
10 and sell them and use them for whatever purpose it wanted?

11 A No, I am not.

12 MR. MCCARTHY: Objection, Your Honor, it calls for
13 hearsay.

14 THE COURT: Overruled.

15 Q Are you familiar with the term restricted or
16 unrestricted?

17 A Yes, I am.

18 Q Okay. What does that mean in museum parlance?

19 A A restriction dictates how you can use a gift, whether it
20 be a work of art, or a cash fund. Unrestricted means that the
21 use of the cash or the gift is up to the museum's board of
22 trustees or governance board.

23 Q Okay. And you spoke about the funds there, I think.

24 A Yes.

25 Q Does it apply to objects as well? Gifts of objects?

1 A Yes.

2 Q Okay.

3 A Yes.

4 Q Can you tell me a little bit about that?

5 A About unrestricted gifts?

6 Q Uh-huh.

7 A Well, they're a -- that's a little less clear cut because
8 every gift we consider comes into the collection with a
9 restriction. And that restriction is that the gift cannot be
10 sold for any purpose except to enhance the collection. So you
11 can't sell a work of art except to buy another work of art.

12 That is an umbrella restriction that we operate under.
13 Beyond that, we try to get gifts given to the collection as
14 unrestricted as possible.

15 Q And why is that?

16 A You -- we assume that we hold gifts in perpetuity. And
17 if you guarantee to a donor that you will always display that
18 work of art that means that you are binding future generations
19 to always display that work of art.

20 So we try not to do that. As in all cases and especially
21 with a museum that's 130 years old, I'm sure there have been
22 exceptions to that rule. But aside from the umbrella
23 restriction we really try not to restrict gifts of art
24 further.

25 Q Okay. Other than what you just described, are there

1 other restrictions such as donor restrictions?

2 A Oh, donors often will --

3 Q Okay. Any other besides that?

4 A There can be restrictions against sale. Probably the
5 most obvious that -- that I know of and I don't know all of
6 them, is the restrictions on the Tannahill bequest. That's
7 one of the major bequests to the museum. It's 500 works of
8 art of incredible quality. And that carries a very definitive
9 restriction in Mr. Tannahill's Will.

10 Q Can you pull up trial Exhibit 252, please? And go to
11 Page 2 which may be Page 3 of this document. All right. Do
12 you -- do you recognize this document?

13 A I do.

14 Q Okay. And could you blow up Article 3 there? And is
15 this the -- the restriction that you just spoke of with
16 respect to the Tannahill collection?

17 A Yes, it is.

18 Q Okay. And what -- what does it say there with respect to
19 that restriction?

20 A It's about midway through and it says, said non-profit
21 corporation and the Detroit Institute of Arts an
22 instrumentality of the City of Detroit, both shall make a
23 written commitment in form of -- in form acceptable to my
24 executors to the effect that the said collection in toto will
25 be permanently retained at the Detroit Institute of Arts with

1 no right or reservation on the part of said non-profit
2 corporation and Detroit Institute of Arts, or either of them
3 at any time to sell or otherwise dispose of said collection or
4 any part thereof.

5 Q Okay. Now I think you said that it applied to about 500
6 works. So it's a pretty small number, isn't it?

7 A It is a small number, but it's a significant part of the
8 collection.

9 Q What do you mean by that?

10 A Mr. Tannahill was a very accomplished collector with a
11 wonderful eye. The collection includes works by Degas,
12 Renoir, Picasso, Cezanne, Van Gogh. It's an amazing
13 collection. Also American silver pre-Columbian works. He
14 really was a very eclectic and -- and fine collector of art.

15 Q Besides the Tannahill collection -- you can take that
16 down, thank you. Are there any other restrictions that you
17 can think of imposed by donors?

18 A There are a few that I can think of. I -- I certainly
19 don't know all of them. But one of them is a very popular
20 folio of photographs by a photographer named Yusef Karsh. And
21 we have agreed to keep that entire folio in the collection or
22 we lose the entire thing.

23 There is a beautiful tintoretto ceiling painting that was
24 actually painted for a ceiling very similar to the one in the

1 ever attempt to remove that from the museum it would be
2 repatriated.

3 We also have a -- a less stunning work -- collection of
4 works from the WPA which are actually owned by the U.S.
5 Government. And if we were to let go of those, they would go
6 back to the government. We hold them in trust.

7 Q Okay. Of the 60,000 works in the collection do you know
8 how many bear this type of restriction?

9 A I don't.

10 Q Why -- why is that?

11 A Generally you don't look at restrictions unless you're
12 looking to deaccession a work. We -- and we don't think that
13 we will deaccession works willy nilly. So we really don't
14 look at restrictions in that sense.

15 Q You recall we -- you recall that we talked about TMS
16 already?

17 A Yes.

18 Q Okay. TMS is a data base, is that right?

19 A It's a collections management data base.

20 Q Okay. Does that contain information about value?

21 A It does.

22 Q And what type of value information is contained?

23 A Generally the TMS data base contains information on three
24 types of value. The -- probably the one I've seen most often
25 is insurance value.

1 When a work of art goes out on loan we insure that work.
2 And so we assign a value to it. But other values that can be
3 in the data base include donor stated value. When we accept a
4 gift into the collection we ask the donor to assign a value to
5 it for tax purposes primarily.

6 Sometimes that donor's stated value is entered into the
7 data base. And then the final type of value that might be in
8 the data base is the purchase price of a work of art.

9 Q Okay. You mentioned I think insurance valuation.

10 A Uh-huh.

11 Q Does the museum go out and obtain like a formal appraisal
12 for a work of art?

13 A Insurance -- no, I'm sorry to interrupt you. The
14 insurance values are generally assigned by a curator because
15 the work is going out on loan.

16 So we don't do a formal appraisal on that, but the
17 curator might call a dealer or an auction house to see what a
18 similar work of art has sold for, or look in the files. Or if
19 it's a work that's frequently loaned might just adjust it
20 accordingly.

21 Q Does it -- does it happen that on occasion there might be
22 a formal appraisal?

23 A I would say rarely.

24 Q Okay. Could you pull up 293, please? Okay. Do you

25 recognize this which is an Excel spreadsheet, but do you
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 107 of 256

1 recognize it?

2 A Uh-huh. Yes, I do.

3 Q And what is it?

4 A This is a spreadsheet that lists some of the most
5 valuable works in the collection. The information is drawn
6 from TMS.

7 Q Okay. And it does have, I think on the right column H, a
8 value line, doesn't it?

9 A Yes, it does.

10 Q Okay. And -- and is that where that -- those value types
11 that you talked about might appear?

12 A Yes.

13 Q Okay. Could you scroll down to number 855? Entry 855.
14 Okay. I just want to look at this. There is a column that
15 says object number. Is that -- is that the DIA object number?

16 A That's the accession number, correct. That's how we
17 track the works in the collection.

18 Q And you'll see the one that's highlighted. It says
19 27.5861 and then if you go down one more it says, 2A.

20 A Yes.

21 Q Okay. And I think, and you if you could just keep
22 scrolling down a little bit. And just keep going. So -- go
23 to 1355. Well, actually just leave it there. Actually go
24 down to 1355, please.

25 So -- so we've got this identical entry there. Do you

1 see that?

2 A Yes, I do.

3 Q Okay. We don't -- the museum doesn't have approximately
4 500 Nepalese manuscripts, does it?

5 A No. This is one of those instances why it's important to
6 understand the data base. Essentially what the registrar has
7 done here is record every single page of the manuscript with a
8 separate object number.

9 I -- I would assume that this is not a bound manuscript.
10 And so it's important to track each separate page. You will
11 see this occur occasionally in TMS.

12 Q Okay. So although 300,000 appears a value field --

13 A It's for the entire --

14 Q It's for the entire thing.

15 A -- collection of pages. One manuscript, many pages.

16 Q I see. Are all 60,000 objects in the -- and thank you.
17 You can take that down, please. Are all 60,000 objects in the
18 collection sort of high quality or commercially significant?

19 A No.

20 Q Okay. Why would that be?

21 A The DIA has been collecting works of art for 130 years.
22 And tastes change, collecting tastes change. As I mentioned
23 earlier, sometimes we will accept an entire collection that
24 might have only one or two really choice works in it, but the
25 donor wants us to accept the entire collection, so we do that.

1 Early in the museum's history, we took into the
2 collection many groups that are really considered study
3 collections. Thinking that scholars might use them, or
4 students might use them to study, so they might be textile
5 fragments or pottery shards.

6 There is a -- a major collection we also saw earlier in
7 one of the examples of arrowheads, things like that. So there
8 are many many things that are not of the quality that you see
9 on our gallery walls.

10 Q Could you pull up demonstrative Exhibit 699, please?

11 Okay. And can you just highlight that? Thank you.

12 And do you recognize -- well, actually at the top it says
13 the new museum system. Do you see that?

14 A Yes, I do.

15 (City's Exhibit 699 was identified)

16 Q Okay. And underneath these objects are -- what are those
17 numbers there?

18 A Those are the accession number for each object.

19 Q Are these objects --

20 A So these are all accessioned into the collection.

21 Q Okay. And is this the type of pottery shards that you
22 just talked about?

23 A Yes.

24 Q And could you pull up 700 and 701, too in sequence,

25 please. So what -- what are we looking at here?

1 A Here you're looking at fragments of lace that are also
2 accessioned into the collection. You can see the numbers.

3 (City's Exhibits 700 was identified)

4 Q Okay. And can you pull up 701, please? And what are we
5 looking at here?

6 A Here you're looking at textile -- textile fragments. It
7 looks like many of them are Islamic.

8 (City's Exhibit 701 was identified)

9 Q Okay. And these are some of the types of works that are
10 in the collection?

11 A Yes.

12 MR. O'REILLY: Okay. Your Honor, I'd like to move
13 demonstrative Exhibits 699, 700, and 701 into evidence as
14 demonstratives.

15 MR. MCCARTHY: No objection, Your Honor.

16 THE COURT: They are admitted.

17 (City's Exhibits 699-701 were admitted)

18 Q Ms. Erickson, you're familiar -- are you familiar with
19 the museum records?

20 A Yes.

21 Q Okay.

22 A And there are thousands of them, so I am not familiar
23 with every single record, but I'm familiar with many.

24 Q Can you describe some of the categories of records that
25 there are?

1 A We are a museum. We save lots of records. Those records
2 primarily concern -- concern objects, also donor files. The
3 curators as I said earlier have extensive records on objects
4 and scholarly research. The development department has
5 records on donors and giving histories. The finance
6 department obviously has financial records.

7 And then we have an extensive archives. And the archives
8 contain everything from old board minutes to the files of
9 previous directors.

10 Q Okay. Are -- are all of them well maintained?

11 A Many of them are well maintained, not all of them are as
12 well maintained as I would hope they are -- they would be.

13 Q Thank you. So if there were a sale of the museum art
14 collection, what effect would it have on the museum?

15 A It would be a devastating blow to the museum.

16 Q Can you tell the Court a little bit about that?

17 A You can't untangle the museum and the collection, they
18 are one and the same. Everything that we do is drawn from
19 that collection.

20 Every education program, every exhibition, every
21 publication. We are the collection. And as I said earlier,
22 safeguarding that collection and holding that collection in
23 trust for the public is the foundation of what we do. Every
24 person who works at the museum takes that very seriously. You

25 can't unwind the two.

1 Q Would it have an effect on the millage?

2 A Pragmatically speaking that's the -- I gave you the
3 emotional side. There's -- here's the practical side, yes, it
4 would have an effect on the millage.

5 Q What type of effect would it have?

6 A We have heard from public statements from the county
7 executives of both Oakland and Macomb counties that they would
8 stop millage payment if anything was sold. I have personally
9 had conversations with the chairman of the Oakland County Art
10 Authority and with one of the deputy county executives of
11 Macomb County that --

12 MR. MCCARTHY: Your Honor, I move to strike the
13 testimony as hearsay.

14 MR. O'REILLY: Your Honor, 803(3), statement of
15 intent.

16 THE COURT: I'll permit it. Go ahead.

17 A I have personally had conversations as I said with
18 Oakland County and Macomb County affirming that the millage
19 would be stopped if art was sold.

20 Q Would it have an effect on donors?

21 THE COURT: All right. Counsel, I have to ask
22 you --

23 MR. O'REILLY: Yes.

24 THE COURT: -- once again to keep your voice up.

25 Q Would it have an effect on donors?

1 A It would have a tremendously chilling effect on donors.
2 I can tell you that since the beginning of Detroit's
3 bankruptcy our endowment campaign has ground to a virtual
4 halt. We simply can't raise money while our future is in
5 question.

6 A sale of art would be even worse. We would no longer
7 get gifts of art because they might be subject to sale. And I
8 think the same thing would apply with cash. If you can
9 liquidate works to pay debt or for another reason you can
10 certainly do that with cash funds. So I -- I can't imagine
11 that donors would be willing to support us.

12 Q And if the museum didn't have the millage or donor funds,
13 would it be able to continue to operate?

14 A Absent the infusion of a huge amount of cash from
15 somewhere else, I -- I think it could not.

16 Q The museum -- is the museum covered -- does it follow any
17 museum ethical standards or is it -- is there an accrediting
18 body that covers the museum?

19 A Yes. We are accredited by the American Alliance of
20 Museums.

21 Q Okay. And does that have any policies with regard to
22 sales of art?

23 A It does. And we also are members of the Association of
24 Art Museum Directors which has a stringent set of policies

25 regarding the sale of art.

1 Q And what are -- what do those policies provide?

2 A Essentially if a museum sells art for any other purpose
3 but to buy more art, they are excluded from the museum
4 community. That may not seem like a big thing to the outside
5 world, but it's a very big thing to us.

6 We would not be able to borrow works of art to organize
7 exhibitions if we were excluded from the museum community.
8 Nor would we be offered exhibitions any longer. So we would
9 be in the terrible position of not getting any exhibition
10 proposals and not being able to fully flush out our own
11 exhibition proposals.

12 In addition to that, we would be sanctioned from
13 participating in the scholarly activities that museums
14 participate in. Visiting lecturers would no longer come to
15 our museum so that would -- would have a devastating effect on
16 that program.

17 Researchers would not come to the museum to look into our
18 collection. We would essentially be persona non grata in the
19 museum world.

20 Q Okay. Did there come a time when you learned that the
21 city was considering its options with respect to the museum
22 art collection?

23 A Yes.

24 Q About when was that?

25 A I believe it was spring of 2013.

1 Q And -- and what did you learn?

2 A We learned that the city was considering the possible
3 liquidation of the art collection to pay creditors.

4 Q And did the DIA respond?

5 A We did.

6 Q How did it respond?

7 A We affirmed that we hold the collection in trust for the
8 public. We believe the city is a partner in holding that
9 collection in trust. And we would defend the collection as
10 needed.

11 Q In addition to that, did you make any other statements,
12 publicly or otherwise?

13 A I -- we made many public statements. We spoke with the
14 media about this. It was reported in any number of media
15 outlets. It was reported in our board minutes. We were -- we
16 were very public about it.

17 Q Was the DIA Corp. authorized to proceed legal action?

18 A Yes, we were.

19 Q Okay. But it didn't do so, correct?

20 A We did not do so immediately. Although we don't have any
21 familiarity with the bankruptcy process, we were told it was a
22 long process and that there were many things that had to be
23 handled. So we didn't pursue litigation immediately, although
24 we certainly prepared for that eventuality.

25 Q And did there come a time when something called the grand
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 116 of 256

1 bargain was reached and I don't want to get into any of the
2 details of that, but did there come a time when that happened?

3 A Yes.

4 Q Okay. And under that DIA settlement if you will, what's
5 the museum's financial commitment?

6 A One hundred million dollars.

7 Q And how is it doing at raising those funds?

8 A It's not easy but we're doing very well. We have
9 approximately \$85,000,000 committed to that and we have
10 multiple asks that are still out there.

11 Q And what's your level of confidence of being able to
12 raise the full amount?

13 A I am completely confident that we will do it.

14 Q What would the DIA Corp. do if the settlement wasn't
15 approved and if the collection was put in jeopardy?

16 A I think at that point we would be in litigation to
17 protect the collection.

18 Q And why would it do that?

19 A Because we hold the collection in trust. And we consider
20 that to be an obligation that we cannot shirk and if it meant
21 that we had to continue fighting legally for it, we would.

22 MR. O'REILLY: Thank you, Ms. Erickson. That's all
23 I have.

24 THE COURT: Let me just ask -- one second. Any

25 further questions on behalf of supporters of the plan, from

1 the city?

2 MR. CULLEN: No, Your Honor.

3 THE COURT: All right. Cross examination.

4 MR. MCCARTHY: Your Honor, Ed McCarthy with Weil,
5 Gotshal on behalf of FGIC again. Just one moment. We have
6 some binders to pass out. May I approach?

7 THE COURT: Yes.

8 MR. MCCARTHY: Thank you.

9 THE WITNESS: Thank you.

10 CROSS EXAMINATION

11 BY MR. MCCARTHY:

12 Q Hello, Ms. Erickson.

13 A Hello, Mr. McCarthy.

14 Q Nice to see you again.

15 A Good to see you as well.

16 Q Ms. Erickson, you're the COO. And I just heard the
17 executive Vice President of the DIA Corp., correct?

18 A Yes.

19 Q Is executive Vice President, is that a new role?

20 A No. Actually that title -- the title is kind of merged
21 together, but in practicality I use COO because people
22 understand it.

23 Q Thank you. And when I say DIA Corp. I mean the
24 non-profit that runs the DIA museum, is that fair?

25 A That's fair.

1 Q Okay. And you've been in that role as COO since 2008?

2 A I have.

3 Q And you've been employed by the DIA Corp. since 1999,
4 correct?

5 A That's correct.

6 Q And you had your deposition taken on July 22nd of this
7 year?

8 A I did.

9 Q And that was here in Detroit?

10 A Yes.

11 Q And you were deposed in your personal capacity, correct?

12 A Yes. And as a corporate witness.

13 Q Right. You sat as a corporate representative for the DIA
14 Corp., correct?

15 A Correct.

16 Q For a number of categories?

17 A Yes.

18 Q And at the time of your deposition, you did not believe
19 that you would be able to provide any testimony in this
20 bankruptcy regarding the value of the art at the DIA, correct?

21 A Not exact valuations, no.

22 Q Okay. And you did not believe you would be able to
23 provide testimony in this bankruptcy on which pieces of art in
24 the collection might be owned by the city, or some other

25 entity, is that right?

1 A Again, beyond an estimate, no.

2 Q Okay. And you had not researched personally --

3 THE COURT: Excuse me, counsel.

4 MR. MCCARTHY: Yes.

5 THE COURT: I'm going to ask you not to ask the
6 witness what she previously testified to.

7 MR. MCCARTHY: Okay.

8 THE COURT: Ask her those questions straight.

9 MR. MCCARTHY: Understood, Your Honor.

10 Q Currently, have you researched personally whether the
11 city at law could monetize or sell the collection at the DIA?

12 A No, I have not.

13 Q Thank you. You're familiar with the DIA Corp.'s argument
14 that the museum collection is held in trust, correct?

15 A Yes, I am.

16 Q And that you actually served at your deposition, Your
17 Honor, as a corporate representative on that topic, right?

18 A Yes, I did.

19 Q And it's your belief as you sit here today that the DIA
20 Corp. holds that collection in public trust as opposed to a
21 charitable trust, correct?

22 A To be truthful Mr. McCarthy, I never really understood a
23 distinction between charitable trust and public trust until
24 this bankruptcy proceeding. I have always considered that we

25 hold the collection in public trust.

1 Q And with respect to your understanding of the term public
2 trust, it's your position that the DIA like all museums holds
3 their collections in trust for the public, right?

4 A Yes.

5 Q And you believe that all museums give the term public
6 trust a special meaning in that they believe they hold their
7 collections in trust in public?

8 A Yes, I do.

9 Q And I believe you just said you believe that's
10 foundational to what you do at the -- at the DIA, correct?

11 A Absolutely.

12 Q But you personally outside of your lawyers haven't
13 conducted any diligence to determine whether the DIA is
14 organized in a manner that does create a trust, whether
15 charitable or -- or public, correct?

16 A Beyond my basic understanding of a trust which is that
17 we, the DIA, holds an asset, the collection and buildings for
18 the benefit of another party, the public, no, I haven't done
19 any research into that.

20 Q Okay. And you haven't personally sat down with anyone,
21 and again outside of your lawyers to deliberate and try to
22 determine whether or not the collection is held in a public
23 trust, correct?

24 A No, I have not.

25 Q Okay. And you're not familiar with any folder of

1 documents or category of documents that's in place
2 specifically filing wise at the DIA regarding whether or not
3 this museum is held in trust for the public, correct?

4 A As I said, there are thousands of documents in the
5 museum. I am not completely familiar with every single
6 document that might be in the archives. There could be
7 something like that, but I don't have personal knowledge of
8 it.

9 Q You're -- you're not aware of that specific set of
10 documents as you sit here today, correct?

11 A I am not.

12 Q Thank you. Let's go back in time a bit to 1919. You're
13 familiar with the transfer of assets from the DMA, which is
14 now called the DIA, to the city to be a public Act 67 of 1919,
15 right?

16 A Yes, I am.

17 Q And you actually sat as a corporate representative at
18 your deposition on that specific topic, right?

19 A Yes. I did address it. I don't know everything about
20 it, but I did.

21 Q Thank you. If we could pull up City Exhibit 286. And
22 that's in your binder at Tab A. Ms. Erickson, if you'd like
23 to use the binder as opposed to the screen, that's up to you.

24 MR. MCCARTHY: Your Honor, this piece of evidence is

25 -- this exhibit is in evidence already pursuant to your order.
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 122 of 256

1 Q You've reviewed this document before right, Ms. Erickson?

2 A Yes, I have.

3 Q And you're familiar with the document?

4 A I have a passing familiarity with it, yes.

5 Q It's your understanding that this is the enabling
6 legislation that led to the transfer of assets from the DMA to
7 the city, is that right?

8 A That's correct.

9 Q Now this document is only a one page document. It
10 doesn't use the term trust anywhere in it, does it?

11 A I would have to read the entire thing.

12 MR. O'REILLY: Objection, Your Honor.

13 A I'm happy to do that if you like.

14 THE COURT: What is -- what is the objection?

15 MR. O'REILLY: Lack of foundation. He's asking her
16 about the legal meaning of a statute.

17 THE COURT: No. He's only asking if one specific
18 word appears in it. I'm not sure why we need testimony on
19 that, but I'll permit it.

20 A I'm reading.

21 THE COURT: Well, let me just ask you counsel. Does
22 the word trust appear in it?

23 MR. MCCARTHY: It does not include the word -- I
24 will proffer the Court --

25 THE COURT: All right. Then let's move on.

1 MR. MCCARTHY: It does include the word public
2 trust, charitable trust, or trust fund.

3 THE COURT: Okay.

4 MR. MCCARTHY: The document can speak for itself on
5 that.

6 A It does say that it will faithfully used for the purposes
7 for which such corporation was organized. And in 1885, the
8 museum was organized to benefit the public.

9 Q That's your view of -- of that, correct?

10 A I believe that that is also contained in the 1885
11 documents.

12 Q Thank you. You're familiar with the minutes at the DIA,
13 correct?

14 A Yes, I am.

15 Q Okay. And those minutes are housed in the DIA -- the
16 files that you've talked about here today already?

17 A Yes, they are.

18 Q And it's your understanding that when the collection was
19 transferred to the city in the 1920's there was -- there was a
20 request that that transfer include a reversion of title. Do
21 you remember that?

22 A I believe so, yes.

23 Q And you -- you prepared -- you actually prepared to
24 testify a bit on that topic at your deposition, right?

25 A Yes, I did.

1 Q But you don't know one way or the other as you sit here
2 whether the reversion of title that was requested by the DIA
3 was actually accepted by the city and included in the deed of
4 trust that was -- that led to the transfer, do you?

5 A I cannot say that definitively. I would need to review
6 that document.

7 Q If we could pull up FGIC Exhibit 3507, please. And this
8 is in your binder at Tab B if you'd like to look at the full
9 document. This is a June 18th, 1981 memo. And it's from the
10 DIA files.

11 MR. MCCARTHY: This document is also in evidence
12 pursuant to Your Honor's order.

13 Q You've seen this document before, correct?

14 A Yes, I have.

15 Q Including at your deposition?

16 A Yes.

17 Q And it's from the DIA files, correct?

18 A Yes, it is.

19 Q And it actually says museum archives up in the top right
20 hand corner, correct?

21 A Yes, it does.

22 Q And this memo is to F.J. Cummings who is the former
23 director at the museum, right?

24 A That's correct.

25 Q And in the memo in the very first paragraph if we could
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 125 of 256

1 highlight there. That starts with at your request. The memo
2 states, at your request, I have researched the minutes and
3 correspondence of the board of trustees and art commission
4 regarding the conveyance of the collections to the City of
5 Detroit in 1919. That's what this Detroit Institute of Arts
6 memorandum says, right?

7 A That's correct.

8 Q And it refers to the arts commission in that first
9 paragraph. The arts commission is appointed currently by the
10 Mayor of the City of Detroit?

11 A Yes, it is.

12 Q And prior to that it was a department of the City of
13 Detroit, correct?

14 A Yes, it was.

15 Q And the commission oversees the DIA Corp.?

16 A The commission insures that we are maintaining our
17 agreement with the city, yes.

18 Q And at least based on the time frame since you've been at
19 the DIA and based on your personal knowledge, it's your
20 understanding that the arts commission has always served that
21 role, correct?

22 A Since I've been at the DIA, that's correct.

23 Q Okay. Now Ms. Gauci represents in this memo that she
24 researched minutes and correspondence. Individuals can and do

1 DIA, right?

2 A We don't open the files to the general public. You can
3 request to come in and look at our files through our research
4 library, tell the librarian what you'd like to see and she
5 will pull those files for you. But it's not very common to
6 have people do that.

7 Q You answered my next several questions. Thank you very
8 much. And scholars have an occasion to do that sometimes,
9 correct?

10 A Scholars most -- most commonly.

11 Q And there's specialists that are employed by the DIA
12 Corp., whether it be registrars or librarians that oversee
13 that process, correct?

14 A Yes.

15 Q Okay. Moving back to the exhibit, this DIA memorandum,
16 halfway down the first page it starts with, if we could scroll
17 down, in the event it starts with. If we could highlight that
18 paragraph, please.

19 And in this DIA memorandum it states, in the event that
20 the city failed in any or all of the conditions, the trustees
21 called for a reversion of title to the donors, i.e., the
22 museum. This provision incorporated into the first deed of
23 conveyance was -- was presented to common counsel in June
24 1919. It was unanimously rejected by the city.

25 That's what this DIA memorandum states, right?

1 A That's what the document says.

2 Q And that's what Ms. Gauci, according to this memorandum
3 concluded based on her research, right?

4 A I would assume so. I don't know Ms. Gauci. I don't know
5 what research she did to reach this conclusion, but that's
6 what she wrote in her memo.

7 Q Okay. And if we turn to Page 2 of the memorandum. The
8 memorandum also states, if we could blow up all those
9 paragraphs. Thank you.

10 And the second sentence of the first paragraph it states,
11 in requesting the city to assume responsibility for the
12 museum, President Booth, and is that President Booth of the
13 museum?

14 A Of the DMA, yes, uh-huh.

15 Q DMA, thank you. Cited lack of funds for its operation
16 and the intent to make conveyance at a later date. And it
17 goes on in the next one briefly. If you could highlight the
18 first sentence of the next paragraph, please.

19 The trustee subsequently authored the preparation of a
20 bill of sale for the art collection and personal property and
21 warranty deed for the real estate in which the reversionary
22 clause and conditions were eliminated.

23 That's what this DIA memorandum states, right?

24 A That's what that section says, yes.

25 Q And then finally, the -- the very last sentence of this
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 128 of 256

1 DIA memorandum which is dated 1981 states, that at the time of
2 the transfer, "Mayor Couzens commented that Detroit is to be
3 congratulated on securing over \$2,000,000 of property at a
4 very -- very small cost".

5 That's what this memorandum states, correct?

6 A That's what the memorandum states.

7 Q Thank you. Now, since the time of -- in between the time
8 of this memorandum which is 1981, and the time -- right yes,
9 1981, the memorandum. And the time that Detroit -- the City
10 of Detroit actually filed for bankruptcy last year, you're not
11 aware of anyone at the DIA whether it be a specialist, or an
12 employee that has gone back and actually researched this issue
13 regarding a reversion of title, are you?

14 A No, I am not.

15 Q Let's discuss some of the current DIA agreements and
16 policies like the collections management agreement that you
17 discussed with Mr. O'Reilly. You're familiar with the 1997
18 operating agreement of the DIA Corp., correct?

19 A I am.

20 Q And you actually sat as a corporate representative on
21 that -- that topic at your deposition, right?

22 A I did.

23 Q If we could pull up City Exhibit 254, the operating
24 agreement. And this is in Tab C of your binder. It's a -- a
25 lengthier document. This is the operating agreement for the

1 Detroit Institute of Arts, correct?

2 A Yes, it is.

3 Q And it mentions the Founder's Society, that is the prior
4 name of the DIA, is that correct?

5 A Yes.

6 Q Thank you. And this relationship outlines -- this
7 agreement, excuse me, outlines the relationship between the
8 City of Detroit and the DIA Corp., is that fair?

9 A Yes, it is fair.

10 Q And this agreement still controls that relationship?

11 A Yes, it does.

12 Q And you have some expertise with this operating
13 agreement?

14 A I have some expertise. It's a very large agreement.

15 Q I will agree with that. Your opinion is that the
16 operating agreement supports your belief that the museum is
17 held in a public or charitable trust, correct?

18 A Yes.

19 Q As you sit here today, do you know, and again without
20 reading the whole document, do you know whether or not it's
21 specifically written into this agreement that the collection
22 is held in a public or charitable trust?

23 A I know that it's written into the agreement that the
24 museum must abide by accepted professional practices or the

25 agreement can be nullified. And in my professional practice,

1 that means that we hold the collection in trust.

2 Q That the agreement can be terminated, is that what you
3 mean by nullified?

4 A Yes.

5 Q Okay. And is that by either party?

6 A It is, but I would assume if we violated professional
7 practice it would be the city terminating the agreement.

8 Q You weren't a party to the negotiations that led to this
9 1997 agreement, were you?

10 A This occurred before I was employed by the museum.

11 Q Looking at the agreement specifically, on Page 1. And
12 Page 1 is actually after the Table of Contents, so it will be
13 -- City Exhibit 254-008 down in the bottom right hand corner.
14 Under recital 5, about halfway down the page. If you could
15 blow that up, please. And then highlight the second sentence.

16 This operating agreement states, the city shall -- shall
17 continue to own the city art collection including works of art
18 acquired prior or subsequent to the effective date as well as
19 the DIA building, correct? That's what this operating
20 agreement states?

21 A That's what that sentence says, yes.

22 Q And that sentence is within the operating agreement,
23 correct?

24 A It is.

25 Q Thank you. Speaking of the DIA building which is

1 mentioned here, it's an iconic building in Detroit, right?

2 A I think you could assume that, yes.

3 Q And it -- would you agree with me that is one of a kind,
4 especially for this part of the country?

5 A I would say that it is one of a kind, yes.

6 Q And was it -- it was recently renovated in 2008?

7 A We did a renovation and expansion and we did the grand
8 opening at the end of 2007.

9 Q And that renovation including -- included adding a new
10 south wing?

11 A Yes. Yes, small -- it's actually an addition on to the
12 existing south wing.

13 Q And the property is located in a preferred part of the
14 city in midtown?

15 A It is.

16 Q And there are many built ins in the building like theater
17 seating and museum lighting and display cases that help its --
18 at least its current use as a museum?

19 A Yes.

20 Q Okay. I want to talk a little bit about the records you
21 discussed in your direct testimony. There's someone at the
22 museum that maintains an inventory of which pieces of the
23 collection may fall into the city art collection versus the
24 founder's collection as you've described it, right?

25 A Yes.

1 Q And that information is held on the DIA data base that
2 you -- you discussed with Mr. O'Reilly, right?

3 A TMS, yes.

4 Q And the TMS system stands for The Museum System, right?

5 A It does.

6 Q And that's a computer system?

7 A It's a collections management data base, yes.

8 Q And there's a number of individuals at the museum who
9 have the specific responsibility for controlling and running
10 that TMS system, right?

11 A Yes.

12 Q And your opinion that this information exists in the TMS
13 data base is based on your belief that as a museum you keep
14 exhaustive -- exhaustive records of the collection, correct?

15 A We do our best to do so, yes. We have 130 years of
16 collecting to manage, so it's not an easy task.

17 Q But you also -- and you also believe that that is found
18 -- that information is found in the TMS system because you
19 keep exhaustive records because that's part of what you do in
20 your stewardship of the collection?

21 A Yes.

22 Q I want to go back to the operating agreement, Exhibit
23 254, please. And again in your binder it's Tab C. If we go
24 to Page 8 which is labeled in the bottom right hand corner

25 City Exhibit 254-015. Thank you.

1 There's a Section E. That's bold and titled retention of
2 assets by the city. And if we could actually blow up the
3 first two there. Thank you.

4 And under this sub section of the operating agreement,
5 the document states, under E-1, city retains title to assets.
6 The city shall retain title to and ownership of the A, city
7 art collection, and B, the DIA properties, including fixtures.
8 This provision is in the DIA operating agreement, correct?

9 A Yes, it is.

10 Q And you yourself have not conducted any diligence or
11 study or asked anyone -- any employee at the DIA to conduct
12 diligence or study to determine which assets are included
13 within the city art collection versus the DIA properties as
14 it's described here, have you?

15 A I have not.

16 Q And this provision Section E-2 titled in bold,
17 acquisition of new assets states, subject to the terms of any
18 gift or bequest as between the city and the society, the city
19 shall also have title to all works of art acquired, whether by
20 gift directly to the DIA and/or the city, or to the society,
21 or any other person or entity for the benefit of the DIA,
22 purchase or otherwise during the contract terms.

23 And this provision is in the operating agreement of the
24 DIA, correct?

25 A Yes.

1 Q Moving on a bit. You regularly review the audited
2 financial statements of the DIA Corp., right?

3 A I usually do that once a year when the audit comes in and
4 I make sure it's posted on the web site and beyond that I -- I
5 don't spend a lot of time with them, no. We have a Chief
6 Financial Officer who is more engaged with that than I.

7 Q But you do feel it's incumbent upon yourself to review
8 the financial statements of the DIA Corp.?

9 A Yes, I do.

10 Q If we could pull up City Exhibit 265, please. And this
11 is a financial statement from the Detroit Institute of Arts,
12 year ended June 30th, 2012. And let me ask you, is this a
13 financial statement from the DIA Corp.?

14 A Yes, it is.

15 Q Thank you. And if we could turn to Page 8. That's City
16 Exhibit 265-10 in the bottom right hand corner. And blow up
17 Note B, please which is titled in bold, relationship with the
18 city and the State of Michigan.

19 And halfway through this first paragraph of Note B,
20 there's a sentence that starts with the city continues. If we
21 could blow up that sentence or highlight it, please.

22 And it states in this financial statement for the DIA
23 Corp., "the city continues to own the museum's permanent art
24 collection including works of art acquired prior or subsequent

25 to the operating agreement as well as the museum building and
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 135 of 256

1 grounds". That is stated here in the financial statement in
2 the notes for the Detroit Institute of Arts, correct?

3 A That's the auditor's note, yes.

4 Q And if we flip back a page or two, sorry to do this going
5 the wrong way, if we go to Page 6 of the financial statement.
6 And that's labeled City Exhibit 265-008. And there's a
7 paragraph art objects and collection. If we could blow that
8 up, please. Thank you very much.

9 In this paragraph under art objects and collection, the
10 second sentence of it reads, title to art objects purchased by
11 or donated to the DIA is offered to the city -- city's art
12 department and title is transferred when accession to the
13 permanent collection has been approved by the board and the
14 arts commission of the city.

15 That statement is included in the financial statement for
16 the DIA, correct?

17 A Yes, it is.

18 Q Thank you. Let's talk about -- a little bit about the
19 collection. And actually the collections management policy
20 that you discussed earlier.

21 You're familiar with the DIA Corp.'s collection
22 management policy, right?

23 A Yes, I am.

24 Q And you sat for -- as a corporate representative on that
25 specific topic regarding that policy, right?

1 A Yes, I did.

2 Q If we could turn to FGIC Exhibit 3067 which is the
3 collections management policy.

4 MR. MCCARTHY: Again, Your Honor, this is already in
5 evidence.

6 Q This is the collections management policy as you
7 discussed for the DIA, right?

8 A It is.

9 Q And if we flip to Page 3 of this policy, in the
10 introduction it notes, the director of the Detroit Institute
11 of Arts, the -- the museum is responsible to the Mayor and the
12 arts commission for the prudent management of the collection
13 of the Detroit Institute of Arts. That's what it says in the
14 collections management policy, right?

15 A Correct.

16 Q And it goes on to say that prudent management dictates
17 the need for written policies and guidelines. This document
18 which is in compliance with the museum's professional
19 practices, policy, and guidelines, is intended to fill that
20 need. That's the opening introduction to the collections
21 management policy, is that right?

22 A That's correct.

23 Q Thank you. And if we move forward in this collections
24 management policy, to Page 10, please. And this is under gift

25 -- gifts and bequests, a title that's on the previous page.

1 Page 9. There's a Section 4 if we could blow that up in the
2 top, please.

3 And under gifts and bequests, this collections management
4 policy notes a number of things in Section 4. It notes, the
5 acceptance of all gifts and bequests shall be without
6 restriction, right? That's what it says in the collection
7 management policy?

8 A Yes.

9 Q And it states, no commitment should be made as to
10 exhibition, attribution, or placement of the gift. That's
11 what it says in the collections management policy?

12 A Correct.

13 Q And it says, while it is the museum's intention to
14 accession for long term use and preservation, no guarantee
15 shall be made that the gift or bequest will be retained by the
16 museum in perpetuity. And that is also in the collections
17 management policy, right?

18 A It is.

19 Q And in fact it states here following. That there shall
20 be no exceptions to this policy unless it is specifically
21 approved through a process in this document -- document which
22 is outlined regarding the board of directors and the arts
23 commission, is that right? I didn't read that directly,
24 but --

25 A I'm reading. That's correct.

1 Q And based on your direct testimony, just in general,
2 you're -- you're aware of the museum's deed of gift form,
3 correct?

4 A I am.

5 Q And the deed of gift form articulates an agreement
6 between the donor and the museum, right?

7 A It does.

8 Q And the collections management policy states on this
9 page, Page 10 at Section 7, if we could blow that up. Thank
10 you.

11 "Use of the museum's deed of gift is mandatory and shall
12 be signed by the legal owners or his or her duly authorized
13 agent before the object can be accessioned".

14 A That's correct.

15 Q Thank you. And it states in the last sentence of this,
16 for bequests, a copy of the Will, all codicils, and letters
17 testamentary should be obtained and kept in the records of the
18 registrar's permanent collection.

19 That is a policy within the collections management
20 policy, correct?

21 A That's correct.

22 Q And the museum adheres to this policy, correct?

23 A We adhere to this policy currently. I can't say what was
24 done before I was employed by the museum.

25 Q That's fair. As you sit here today, you're not aware of
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 139 of 256

1 any instances in which the DIA Corp. failed to comply with the
2 policy, are you?

3 A As I sit here today I'm not, but I must say that I don't
4 know every single thing that happens in the museum every day.

5 Q Understood. And as you sit here today, it is your view
6 that this deed of gift form -- well, let me ask it a little
7 differently. As you sit here today, are you aware of any
8 object file for any piece of art in the collection where a
9 deed of gift is not included in that object file?

10 A I couldn't say. I -- there are hundreds of object files.

11 Q And it's your view that this policy that the museum
12 mandatorily used deed of -- deeds of gifts is in place and
13 developed to insure that there is clear title to a gift that
14 passes from the donor, is that right?

15 A That's correct. That's one of the reasons for it.

16 Q Okay. One of the final sections I want to look at in the
17 collections management policy is on Page 11, the next page.
18 And it talks about deacquisitioning. If you could just
19 highlight the title and the first section of -- Section A
20 there. Thank you.

21 Now this -- this section deacquisitioning is the section
22 in the collections management policy that outlines the process
23 whereby the museum actually can have -- can allow pieces of
24 art to leave its collection, correct?

25 A Correct.

1 Q And these may be pieces of art that were donated by
2 someone in the community, is that fair?

3 A They could be.

4 Q And in the past the DIA has sold art, correct?

5 A Yes.

6 Q And they've sold pieces of art while you've been employed
7 at the DIA, right?

8 A We have, but only to purchase other works of art.

9 Q Understood. And long before you worked at the DIA, it's
10 your opinion and your knowledge that the -- the DIA sold
11 pieces of art at that time too, correct?

12 A It's my opinion and knowledge, yes. I can't say
13 specifically to each sale what happened from that sale.

14 Q Thank you. Flipping to the next tab in your binder.
15 This is FGIC Exhibit 3286. And it will come up on your screen
16 there. And this document is entitled -- is titled DIA
17 collections management policy attachments. And there's
18 numbers in the bottom right hand corner of this if we could
19 shrink it.

20 That note starting with DIA and this notes that this
21 document was produced from the DIA from its files, okay. As
22 stated at the top, these are the DIA's collection management
23 policies attachments, is that right?

24 A That's correct.

25 Q And the DIA keeps policies and agreements like this in
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 141 of 256

1 its files, right?

2 A It does.

3 Q And the DIA -- DIA staff refers to policies and
4 agreements such as these in its normal course of business,
5 correct?

6 A I would assume, yes, they do.

7 MR. MCCARTHY: Your Honor, at this time I'd move
8 into evidence FGIC exhibit, what is it, 3286.

9 THE COURT: Any objections?

10 MR. O'REILLY: No. I think it may have already been
11 moved in the early part of this session. But no objection,
12 Your Honor.

13 THE COURT: All right. If it's not in evidence
14 already, it is admitted.

15 MR. MCCARTHY: Thank you, Your Honor.

16 Q Moving on to another topic, Ms. Erickson. You sat as a
17 corporate representative at your deposition and -- and you
18 testified today here about the museum's collection and its --
19 your view that it's important to the city and the state,
20 correct?

21 A Correct.

22 Q Now the DIA Corp. has not looked into specifically if it
23 sold any portion of the collection that's currently not on
24 display, even one of the sixty -- sixty or so thousand pieces

25 of art, whether that would have any impact on any of the

1 particular programming that the DIA Corp. offers, whether it
2 be the school programming, adult educations, or Veterans
3 programming you discussed, have they?

4 A As I testified earlier, the collection and the museum
5 really are entwined. And to lose any part of the collection
6 would mean a definite change in programming, perhaps the
7 elimination of some programs. It's difficult for me to say
8 without understanding exactly what those changes might be.

9 Q Your deposition, Ms. Erickson is in the front pocket of
10 the binder that I gave you. Could you turn to that, please?

11 A Sure.

12 Q Thank you very much. We've already talked about it, but
13 you provided a deposition in this case, right?

14 A Yes, I did.

15 Q And I actually asked you the questions at that
16 deposition, right?

17 A You did.

18 Q And you knew you were under oath?

19 A Yes.

20 Q And just like here today you've tried your best to give
21 honest answers, correct?

22 A I am doing that right now.

23 Q If you could turn to Page 131 in your deposition, Line
24 14. And we're going to from Line 14 to the end of the page,

25 Line 20. Let me know when you're there. It's actually on
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 143 of 256

1 your screen too, if it's easier.

2 A Okay.

3 Q Did I ask you the following question and did you provide
4 the following answer? Has the DIA looked into specifically
5 whether if it sold any portion of the collection that is
6 currently not on display at the museum, whether that would
7 have an impact on any of the particular programming that you
8 mentioned, whether it be school programming, adult education,
9 or Veterans programming? Answer, no, we have not looked into
10 that.

11 Did I ask that question and did you provide that answer?

12 A Yes, I did.

13 Q You talked a little bit about accreditational
14 organizations in your direct testimony. There has been no
15 accreditation organization that has contacted -- contacted the
16 DIA Corp. specifically and advised the DIA Corp. that they
17 could face sanctions if they sold or monetized a portion of
18 the collection, correct?

19 A That's correct.

20 Q And since the filing of the City of Detroit's bankruptcy,
21 you're not aware of the DIA Corp. taking any efforts to
22 determine how much money it could obtain from renting or
23 leasing any portion of the collection, correct?

24 A That's correct.

25 Q Now bear with me for a minute because I'm going to flip
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 144 of 256

1 between a couple of -- of agreements. If we look back to the
2 operating agreement, and this is City Exhibit 254.

3 We already discussed -- it's your view that the city and
4 the DIA Corp. in certain circumstances had the right to
5 terminate this operating agreement, correct?

6 A That's correct.

7 Q And if you turn to Page 48 of this operating agreement
8 provision 03, and that's labeled at the bottom right hand
9 corner, City Exhibit 254-055. And if we could blow up section
10 -- well, let me just ask you.

11 Section L-3. This provision just in general, includes
12 some of the circumstances under which the DIA Corp. or the
13 city would be able to terminate the agreement, is that fair at
14 a high level?

15 A It says material breach, yes.

16 Q Okay. And it states under L-3, that the city or the
17 society may terminate this agreement upon 90 days prior
18 written notice in the event of a material breach. That's what
19 this DIA Corp. operating agreement states, right?

20 A Correct.

21 Q And on the next page, flipping over to Page 49 under
22 Section 4, if we blow that up. It's titled in bold, material
23 breach. And it outlines a number of circumstances that may
24 lead to a material breach, is that fair?

25 A It does.

1 Q In one of the listed sub sections of sub Section C, and
2 sub Section C lists F-1 through F-29 amongst other things,
3 right?

4 A Correct.

5 Q Okay. And here's where we get just a little tricky, bear
6 with me. If we go back to Section F of the operating
7 agreement, and that's at Page 10, and if we highlight the
8 first sentence of 2-A, the society's duty to manage the art
9 collection, it states, the society shall be responsible for
10 managing the city art collection in accordance with the DIA's
11 collection management policy, correct?

12 A That's correct.

13 Q Okay. And now if we flip back to that collections
14 management policy, which again is FGIC 3067. And that's Tab E
15 in your binders if you're using that. Moving to Page E of
16 FGIC 3067.

17 A VOICE: Page 18.

18 MR. MCCARTHY: Page 18. Thank you very much, Kim.

19 Q And under Section X records. X-A notes that the
20 collections management policy requires, "the maintenance of
21 accurate up to date records on the identification, location,
22 and condition of collection objects is a major responsibility
23 for the museum. That's noted here in the record -- that's
24 noted here in the collections management policy, correct?

25 A Yes, it is.

1 Q And there's someone at the museum whose job it is to
2 determine whether the museum is complying with this policy,
3 right?

4 A There is an entire department, the registrar's office.

5 Q And in fact it's your view that not only is it that
6 person's job, it's many others, including your own to have a
7 duty to insure that the collections management policy is
8 followed, is that fair?

9 A I -- I don't have direct responsibility for that, but
10 yes.

11 Q And then if we flip to the next page -- actually --
12 actually, excuse me. Moving to Page 20 of this document, two
13 pages forward. Under Section 13, inventories. Right in the
14 middle of the page. If you could blow that up, please.

15 The collections management policy requires that, "the
16 collections of the museum will be comprehensively inventoried
17 once every seven to ten years". And it notes further down the
18 section that, "each year a physical inventory will be
19 conducted by the collections management office", correct?

20 A That's correct.

21 Q Now you don't know one way or the other whether the
22 museum undertakes this type of inventory this year as it's
23 stated here in the collections management policy, do you?

24 A I don't know that we have done that this year, no. I

25 know that we do do ongoing inventories. If you highlight the
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 147 of 256

1 rest of the sentence, it says, from a list of all objects
2 valued at \$1,000,000 or more, I cannot be that specific. But
3 I know that the registrar's office does do ongoing inventory
4 checks.

5 Q If you'd turn to Page 94 in your deposition. Excuse me.
6 Lines 14 through 22. Excuse me, Line 19 through 22.

7 Did I ask you the following question and did you provide
8 the following answer at your deposition in July?

9 A That's correct, yes, I did.

10 Q I'm sorry, thanks for -- let me finish it now.

11 A Okay.

12 Q The question, do you know whether or not the museum
13 undertakes this inventory each year as it's stated here in the
14 collections management policy? Answer, I don't know.

15 Did I ask that question and did you provide that answer?

16 A I did and it was referring to the entire statement of
17 objects over \$1,000,000. And I said I did not know.

18 Q Now going back to the operating agreement one last time.
19 And this again is City Exhibit 254. On Page 50, Section 7-A
20 could we highlight that?

21 Turning away from the operating agreement for a moment,
22 as you sit here today, Ms. Erickson, do you know personally,
23 have any understanding of what would happen -- Ms. Erickson,
24 I'm sorry.

25 A Yes.

1 Q Thank you. Do you know when you sit here today what
2 would happen if for any reason including inventories or the
3 records that we talked about here, do you have any
4 understanding as to what the DIA Corp.'s relationship with the
5 collection would be if this agreement was terminated?

6 A I don't actually.

7 Q And the operating agreement at this section, Section 7-A
8 includes a section titled effect of termination, right?

9 A Yes.

10 Q And it states here, under the effect of termination in
11 bold, "effect of termination. Upon the termination of this
12 agreement, the society shall deliver to the city the
13 possession, custody, and control of the DIA building, the
14 employee parking lot, and the city art collection". That's
15 stated here in the operating agreement, correct?

16 A Yes, it is.

17 MR. MCCARTHY: Thank you. I don't have any further
18 questions at this time, Your Honor.

19 THE COURT: Any further cross examination of the
20 witness? No? Any redirect?

21 MR. O'REILLY: Short, Your Honor, hopefully. Don't
22 everybody start laughing.

23 THE COURT: Well --

24 MR. O'REILLY: Your Honor, I've got a demonstrative
25 that I'd like to use. I can tell you that it's only being

1 done in response, so it's not been shown to the other side
2 yet, but I have copies for them. Thank you.

3 THE COURT: Okay.

4 MR. O'REILLY: And might I approach, Your Honor?

5 THE COURT: Yes.

6 REDIRECT EXAMINATION

7 BY MR. O'REILLY:

8 Q Ms. Erickson, Mr. McCarthy just asked you a lot of
9 questions about the document policies and the management of
10 your documents. Do you recall that -- those questions and
11 your answers?

12 A I did. I do.

13 Q And I've put in front of you several images. Do you
14 recognize those images?

15 A I do.

16 Q Okay. What are they images of?

17 A They're images of records storage space within the
18 museum. The first is the library stacks and then the
19 following several are in the archives in the attic of the
20 museum.

21 Q Okay. Why are those records kept in that fashion?

22 A The museum has not been blessed with a great deal of
23 extra money and one of the things that we cut when we cut --
24 cut our -- our budget was the archivist. And so many of our
25 records are in deep storage. They're safe, they're secure.

1 but they have not been analyzed and organized in a way in
2 which we would hope we would be able to do at some future
3 date.

4 Q Thank you. And if you wanted to understand some of the
5 information you might principally go to the registrar's
6 office?

7 A Yes. That would be my first stop.

8 Q Do -- do the images show areas in which other documents
9 related to the museum and its collection might exist?

10 A Yes, they do.

11 Q Thank you. Ms. Erickson, you were asked by Mr. McCarthy
12 about the operating agreement, and the collection management
13 policy, and the deed of gift. Do you recall those questions
14 and answers?

15 A I do.

16 Q And I think he asked you a question about whether the
17 deed of gift transfers clear title. Do you recall that?

18 A He did.

19 Q Do you know whether the museum has always followed that
20 practice in the past?

21 A I can't say through the entire history of the museum. I
22 know that in my time there yes, we've -- we've had a deed of
23 gift.

24 Q Okay. And he talked I think a little bit about the

25 restricted nature and the transfer of clear title. Today does
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 151 of 256

1 the museum ever make exceptions to that policy?

2 A Not to my knowledge. I -- I have to say that
3 transferring title is -- I don't know what the process for
4 that is. We accept the deed of gift, we recommend the --
5 those objects to the collections committee and the board, and
6 then we send a quarterly report to the arts commission, then
7 we have an annual meeting with the arts commission. If that
8 constitutes transfer, I --

9 Q Let me try it differently. Does the fact that the museum
10 has a policy today tell you anything about the number of works
11 in the collection that are or are not restricted?

12 A No, not at all. You would have to -- as I said in my
13 testimony earlier, to really find out about a restriction on a
14 gift that would generally be a gift that we were considering
15 for deaccessioning and we would do a deep dive into the
16 records of that gift. There is no broad way to determine
17 that.

18 Q Thank you. Mr. McCarthy asked you several questions
19 about documents such as old statutes and asked you to find the
20 word trust. Do you recall that?

21 A I do.

22 Q Okay. Do you have any doubt that the collection is held
23 in trust?

24 A I do not.

25 Q Why not?

1 A Because it is in many many documents, the ones that Mr.
2 McCarthy highlighted it wasn't included in, but if you go back
3 into the museum's archives and you look at -- at documents
4 that state that, you will find many documents that talk about
5 public trust. As I said, back to the 1885 DMA documents, all
6 the way up to the 2012 letter from Mayor Dave Bing in which he
7 clearly states that the city holds the museum in trust.

8 Q Mr. McCarthy asked you several questions about the
9 operating agreement and issues and statements about title and
10 ownership. Do you recall that?

11 A I do.

12 Q Okay. Does that operating -- does that operating
13 agreement say anywhere that the city has the right to
14 liquidate the collection or use it for its own purposes?

15 A I don't believe it does.

16 Q Okay. Do you in fact know whether the -- the city holds
17 legal title to specific objects in the museum art collection?

18 A I really don't know.

19 Q Okay. Do you know who holds the beneficial ownership of
20 the museum art collection?

21 A The public holds the beneficial ownership of the art
22 collection.

23 MR. SOTO: Beneficial ownership is a legal concept.

24 THE COURT: I'll accept the answer as the witness'

25 understanding with the understanding that it is not intended
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 153 of 256

1 to convey a legal opinion.

2 MR. O'REILLY: Thank you, Your Honor.

3 THE COURT: Is that fair, Ma'am?

4 A That is fair.

5 Q Mr. McCarthy also asked you several questions about
6 things that happened in 1919. Well, we'll skip that part

7 THE COURT: Be careful.

8 MR. O'REILLY: I'm learning, Your Honor.

9 A Please.

10 Q And he pointed to a memo from I believe 1981 that talked
11 about I guess some work that somebody in 1981 did. Do you
12 recall those questions and those answers?

13 A Yes, I do.

14 Q Okay. And he talked to you about a reversion. Do you
15 recall that as well?

16 A Yes.

17 Q Okay. Are you aware of other documents that address the
18 right or possibility of reversion?

19 A I'm aware of at least one other letter that actually
20 assures a donor that the museum does have the right of
21 reversion should something happen to the city. That's -- and
22 I think it probably -- this is probably an issue that would
23 occur in many documents if you did an exhaustive search.

24 Q Okay. Could you put up 272, please? And if you could go

25 to City Exhibit 272-025. Have you ever seen this document

1 before?

2 A Yes, I have.

3 Q All right. Could you highlight the bottom paragraph,
4 please?

5 THE COURT: Is this in evidence, sir?

6 MR. O'REILLY: It is, Your Honor. It's an ancient
7 document. And can actually see it a little better than it
8 shows on the screen.

9 MR. MCCARTHY: Mr. O'Reilly, was this moved in this
10 morning? Just so I know. I'm trying to get my notes --

11 MR. O'REILLY: Yes, it was.

12 MR. MCCARTHY: Okay. Thank you.

13 MR. O'REILLY: Actually let me confirm this so I
14 don't misspeak.

15 Q So you didn't author this, but would you mind reading
16 that for the Court, please?

17 A It is our practice with all gifts to our collection to
18 present them first to our sustaining society, the Detroit
19 Museum of Art Founders Society, which acts as our financial
20 institution. The Founders Society however transmits all its
21 purchases and gifts made to it to the arts commission who
22 accepts them to become the property of the City of Detroit.
23 If owing to unforeseen circumstances, the City of Detroit
24 should go out of business, title to the collection would
25 revert to the Detroit Museum of Art Founders Society.

1 This is probably as secure a future for a work of art as
2 any museum can provide. At least it has never been questioned
3 by any of our great donors here.

4 MR. O'REILLY: That's all I have, Your Honor.

5 THE COURT: Any recross examination?

6 MR. MCCARTHY: No, Your Honor.

7 MR. O'REILLY: Sorry, one other thing. I don't
8 think I moved those images of the archives into evidence. I
9 would like to move them in as demonstratives.

10 THE COURT: Do we have a number?

11 MR. O'REILLY: 713.

12 (City's Exhibit 713 was identified)

13 THE COURT: Is there any objection to the admission
14 into evidence of Exhibit 713?

15 MR. MCCARTHY: No objection as to the use of them as
16 demonstratives, Your Honor.

17 THE COURT: All right. For that purpose they are
18 admitted.

19 (City's Exhibit 713 was admitted)

20 THE COURT: In the interest of full disclosure, we
21 met, right?

22 A We did.

23 THE COURT: When was that?

24 A It was a couple of weeks ago. I took you on perhaps the
25 fastest tour of the museum I've ever taken anyone on.

1 THE COURT: This was part of the city's site tour?

2 A Yes, it was.

3 THE COURT: Do you remember our brief conversation?

4 A I remember we said hello. You instructed us that we were
5 really not to speak to you and I think the last thing I said
6 to you was, suggesting that you take another table for lunch
7 because the one that you were going to take was very close to
8 the air conditioning vents.

9 THE COURT: Okay. And did you abide my instruction
10 not to discuss the museum with me?

11 A Yes, I did.

12 THE COURT: Okay. I'm going to use the word value
13 in some questions I have for you.

14 A Okay.

15 THE COURT: But in this context I don't mean
16 economic value. I mean non-economic value. Okay?

17 A Understood.

18 THE COURT: Okay. What is your opinion on what the
19 value of the museum is to the 60,000 school children who you
20 said comes there -- well, I don't know that you said every
21 year, but in the past year.

22 A Uh-huh. I think the museum is of tremendous value to
23 those children. It gives them an opportunity first of all to
24 get out of their classroom and do something different and to

25 learn something different. And to look at the world through a

1 different lens than they might see in their classroom.

2 We do a tour called shaping identities in the museum that
3 looks at different cultural collections and talks about how
4 people come to an understanding of themselves. I think that's
5 really valuable.

6 And if I could tell you a small anecdote. I've -- last
7 spring when we were very full of school children, I was
8 walking through the museum and there were two little boys
9 walking together and one of them looked at the other one and
10 said, wow, this is a lot cooler than I thought it was going to
11 be.

12 I think that that kind of thing happens every day in the
13 museum. I think it builds museum goers. I think it improves
14 people's cultural competency. I think it opens them up to a
15 world that they might not be open to. And that's one of the
16 reasons why we were so delighted to provide free admission
17 when the millage passed because it should be open to everyone.

18 THE COURT: What is the value to the children of
19 participating in the programming that the museum offers apart
20 from just the opportunity to see the art?

21 A Well, the museum uses a teaching method called visual
22 thinking strategies. And all of our tours, our school tours
23 are based on VTS. And VTS has been deeply studied by the
24 organization that first began to use it, it's called the view.

1 art museum begin to develop skills in terms of critical
2 thinking, in terms of being able to articulate their thoughts
3 better verbally, and sometimes if we do a writing program with
4 them in terms of writing.

5 We also have literally thousands of comments from
6 teachers because we survey every teacher after every school
7 tour that talk to us about what happened with their students
8 when they were at the museum. And it really does sharpen
9 their acuity in ways that one wouldn't necessarily expect.

10 THE COURT: Families go to the museum.

11 A They do.

12 THE COURT: What is the value to families when
13 parents take school age children to the museum?

14 A I think the museum is a very safe social place for
15 people. They can come in, they can feel very comfortable and
16 they can engage with each other in a way they certainly
17 wouldn't do in front of a television.

18 And I think it promotes conversation. Our labels as I
19 mentioned when I discussed the reinstallation, are really
20 designed to encourage looking. And that's something that
21 doesn't require an expert level of knowledge, so parents can
22 actually feel smart.

23 And that's an important concept because if a parent
24 doesn't feel smart, they're not comfortable talking to their
25 child about what's happening in the museum. So that's why we

1 have things like the eye spy labels. Like the -- the labels
2 that encourage looking, like the technology. So it encourages
3 interaction, it encourages conversation.

4 We really don't want a silent art museum at the DIA. We
5 want people to talk about what they're seeing and we -- our --
6 our mission statement actually says that we create experiences
7 that help people make personal connections with art. Help
8 people find personal meaning in art. That's what we believe
9 art is about.

10 THE COURT: Well, to -- to what extent does the
11 museum going experience for a family create opportunities for
12 communication among the family members themselves?

13 A Many of the labels actually ask questions. And so as I
14 said, if the parent feel a bit of comfort level they can ask
15 that question.

16 There are also -- some of the technology applications.
17 If you do the ipad in Rivera court you can see Rivera painting
18 the murals. You can see what's happening there. That really
19 promotes a lot of conversation. It goes through the technique
20 of fresco and you can actually see the technique in front of
21 you.

22 And we -- on all of our self guided tours, the -- the
23 ones I was talking about earlier that are about sports and
24 nature, there are specific questions to promote conversation

25 among families or groups. So we kind of -- try to direct some
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 160 of 256

1 type of dialogue. And it's been very successful.

2 And actually Mr. O'Reilly would be very disappointed if I
3 didn't talk about the I spy labels because I know he uses them
4 with his own children and talks about that all the time.

5 THE COURT: All right. Let's not make counsel a
6 witness here.

7 A Okay.

8 THE COURT: Same question, what -- what is the value
9 of going through the art museum to adults who go through? Why
10 -- why do adults go to the DIA?

11 A I think that adults go, and I can -- I can put myself
12 among that because I do go to the museum and go to other
13 museums. I think that adults go as a reminder of
14 possibilities.

15 The museum reminds us all that we can be creative problem
16 solvers because in the end that's what artists do, they solve
17 problems. So I think that adults, though they may not
18 actually identify it as that, they go for inspiration.

19 Certainly they will tell you they go to be educated
20 because I think they probably feel that that's a necessary
21 part of the visit though I don't agree with that. But I think
22 they go to be educated, they go to be inspired, they go to see
23 something different. It takes them out of the norm of every
24 day life in a way that is -- is very satisfying.

1 emphasis on what I said earlier about this being a question
2 about non-economic value. What is the value of the DIA to the
3 city and the region as a whole?

4 A As we talked about earlier the midtown area where the
5 museum is located, is a -- is one of the thriving areas in the
6 city right now. But it wasn't always like that.

7 And 15 years ago when I came to the museum, midtown did
8 not look the way it looks today. Nonetheless the museum
9 remained a solid stable anchor in that neighborhood. We have
10 always done our best to maintain our property, to be a
11 welcoming presence, to make sure that in our neighborhood we
12 were interacting with our neighbors and we were creating a
13 safe place.

14 We weren't always completely successful at that, but --
15 but that was our intent. As midtown has grown we have been
16 supportive of our neighbors. We are very very supportive in
17 terms of new businesses that move in.

18 If you come to the museum's Kresge court where you can
19 have lunch there's a concierge who sits right at the front of
20 the court. And if you don't feel like dining with the museum
21 she will be happy to direct you to a local restaurant or make
22 a hotel reservation for you.

23 I think that we also are absolutely a part of the fabric
24 of the events in the neighborhood. Next weekend we will be

1 Incorporated sponsors.

2 In a couple of weeks we will see Noel night, another
3 major event that midtown Detroit sponsors. The museum is
4 absolutely essential to all of those events. We are part of
5 the curatorial committee for those events.

6 For Noel night we host all kinds of programming in our
7 building. We are part of the fabric of this neighborhood and
8 I think without it midtown would be much poorer.

9 THE COURT: And my question -- my question was
10 actually broad enough to include not just midtown, but the
11 city as a whole and the region.

12 A The region. Your Honor, I -- I think that the best
13 statement of value about the museum is the fact that in 2012
14 when Michigan was still struggling, voters in Macomb, and
15 Wayne, and Oakland counties passed a property tax to support
16 the museum.

17 And in return for that we have really stepped up our
18 community outreach into those counties. We've done it in a
19 number of ways. We do tours from small art galleries and
20 exhibition spaces in the counties to the museum because we
21 believe that those small spaces are really important to
22 communities.

23 Not everyone is going to have a DIA in their backyard.
24 But you can have a local art center and you can appreciate

1 citizens from the counties into the museum. And indeed we
2 fund transportation for that because there is a certain
3 nervousness among seniors to come into the museum.

4 So we really feel very strongly that the counties are
5 part of our community, they're in fact a major part of our
6 community now given the property tax. And we think that the
7 DIA is central enough to bring people in.

8 We were the first -- the passing of the millage was the
9 first real tangible statement about regionalism. And I know
10 that's come up in these proceedings. But we were a positive
11 statement about regionalism. And I think we can and will
12 continue to be that.

13 THE COURT: All right. That's all I have. Any
14 further questions for the witness?

15 MR. O'REILLY: No, Your Honor.

16 MR. MCCARTHY: No, Your Honor.

17 THE COURT: All right. You are excused. Thank you
18 for coming today.

19 A Thank you.

20 (WITNESS ANNEMARIE ERICKSON WAS EXCUSED AT 12:11 P.M.)

21 THE COURT: We will break for lunch now and
22 reconvene at 1:40, please.

23 THE CLERK: All rise. Court is in recess.

24 (Court in Recess at 12:11 p.m.; Resume at 1:40 p.m.)

25 THE CLERK: All rise. Court is back in session.

1 You may be seated. Calling case number 13-53846, the City of
2 Detroit, Michigan.

3 THE COURT: Sir.

4 MR. IRWIN: Your Honor, Geoff Irwin, Jones, Day for
5 the City of Detroit for the record. The city would like to
6 next call Mr. John Satter.

7 THE COURT: Okay. Please raise your right hand.

8 (WITNESS JOHN SATTER WAS SWORN)

9 THE COURT: Please sit down.

10 DIRECT EXAMINATION

11 BY MR. IRWIN:

12 Q Good afternoon, Mr. Satter.

13 A Good afternoon.

14 Q Thank you for being here. Could you please state your
15 full name for the record?

16 A Yes. John Charles Satter.

17 Q And where do you live?

18 A Glencoe, Illinois.

19 Q And what is your profession?

20 A I'm a real estate appraiser.

21 Q Okay. Who do you work for?

22 A I work for Hilco Real Estate Appraisal, LLC.

23 Q And was there a point in time in 2014 when you were
24 retained by Jones, Day on behalf of the City of Detroit in

25 connection with this bankruptcy matter?

1 A Yes.

2 Q At a very high level what was the nature of that
3 engagement?

4 A We were hired to provide a fair market value for the DIA
5 property.

6 Q Did you -- did you personally work on that project?

7 A Yes, I did.

8 Q Was it completed?

9 A Yes, it was.

10 Q Did you submit an expert report in this case?

11 A We did.

12 Q Okay. Let's briefly talk --

13 THE COURT: Just a second. Can you pull that
14 microphone closer, please?

15 A Sure.

16 THE COURT: And speak right into it.

17 A Is that better?

18 THE COURT: Yes. Thank you.

19 A Okay, sorry.

20 Q Where did you go to college, Mr. Satter?

21 A The University of Illinois.

22 Q And when did you graduate?

23 A 1991.

24 Q With what degree?

25 A A Bachelor's Degree in Civil Engineering.

1 Q Did you take a job not long after that?

2 A I did.

3 Q With whom?

4 A I joined an appraisal firm of Wayne Winnick and
5 Associates in Chicago.

6 Q And what was the nature of your employment there?

7 A I was the staff appraiser.

8 Q For how long?

9 A For four years.

10 Q And what kind of projects did you work on as a staff
11 appraiser?

12 A Just general real estate appraisal assignments, both
13 residential, commercial nature for the firm.

14 Q What did you do next?

15 A In late October of '96, I formed my own business and
16 continued the same profession.

17 Q Was it -- this is the appraisal business?

18 A Yes.

19 Q Okay. Did you do anything else besides appraisals in
20 connection with that employment?

21 A Well, as the owner of the company I was responsible for
22 all aspects of the business, business development, appraisal
23 production, review, administrative work.

24 Q How long was -- how long did you keep this -- how did you
25 -- long were you employed at JCS Real Estate Services?

1 A I ran that business for 15 years.

2 Q Okay. And what did you do after that?

3 A In late 2011, I was recruited to join Hilco Real Estate
4 Appraisal as their midwest lead.

5 Q And what are your duties and responsibilities as midwest
6 lead?

7 A So as a managing -- managing director and the regional
8 manager, I'm responsible for similar tasks as -- as when I was
9 working on my own of business development, staff management,
10 assigning work, a lot of review work. Also some of my own
11 production. And working in concert with the rest of our
12 business units at Hilco Global.

13 Q How much of your time at Hilco -- by the way when did you
14 -- when did you take employment at Hilco?

15 A Right at the end of 2011.

16 Q Okay. So for the last three years?

17 A About three years.

18 Q Okay. How much of your time at Hilco do you spend on
19 real estate appraisals?

20 A So I'll directly be involved in an assignment say of the
21 nature of the DIA about 20% of my time.

22 Q How many on average, how many appraisals per year do you
23 work on?

24 A I'll be probably running about two of those a month, and

25 sometimes it could be more, but generally they're large

1 assignments, portfolio assignments as opposed to like one off
2 assignment.

3 Q How many years of experience with real estate appraisals
4 do you hold yourself out for?

5 A Over 22 years.

6 Q How many real estate appraisals could you approximate
7 you've worked on?

8 A Like thousands, you know, 5,000, 6,000.

9 Q On an order of magnitude, can you describe the aggregate
10 market value of the appraisals that you've worked on?

11 A I mean it would be in the billions, maybe a trillion
12 dollars. I mean that's kind of a hard number to flesh out,
13 but --

14 Q What's the highest value appraisal that you've worked on?

15 A We've worked on -- the highest -- the highest value is a
16 office complex for an investment group, about \$825,000,000.

17 Q Okay. What are the types of real property that come to
18 you in connection with your appraisal business?

19 A So almost all the food groups, you know, retail,
20 commercial, industrial, residential, and special use.

21 Q Special use. What is a special use property?

22 A Special use property would be like the DIA. It's a -- a
23 facility built for a specific purpose and it's for a specific
24 use and user.

25 Q And so have you worked on appraisals involving special

1 use properties during the course of your career?

2 A Yes, numerous.

3 Q All right. Can you give some examples of other kinds of
4 special use properties that you personally have worked on?

5 A Sure. We just recently finished an assignment in
6 Coldwater, Michigan of a two and a half million square foot
7 greenhouse.

8 We've appraised numerous recreational facilities,
9 churches, movie theaters, truck terminals, all kinds of
10 properties that would be built for one specific user type.

11 Q Do you hold any certifications or licenses, sir?

12 A I am a certified general real estate appraiser in I think
13 11 or 12 states. And --

14 Q Does that include Michigan?

15 A Including Michigan, yes.

16 Q Are you a member of any professional organizations?

17 A I am. I hold the MAI designation.

18 Q What is an MAI designation?

19 A The designation is awarded by the appraisal institute
20 which is a leading peer group educational provider, best
21 practices group. And that is -- that designation is awarded
22 with -- after several requirements.

23 Q You have to take a test?

24 A You have experience requirements, there's educational
25 requirements, there's demonstration report requirements.

1 there's a comprehensive exam which is similar to like a CPA
2 test if you will. And again experience -- experience review
3 by your peers.

4 Q How long have you been a member of the --

5 A Since 2007.

6 Q Okay. And how many MAI's are there among licensed
7 appraisers?

8 A You know, the number is like around 5,000, I think, in
9 the United States.

10 Q Out of how many total licensed appraisers?

11 A I think the current figure that like I said, was 100,000
12 licensed appraisers.

13 Q Okay. So five thousand out of a 100,000?

14 A Correct.

15 Q Okay. What kind of clients come to you at Hilco seeking
16 out your assistance with appraisal work?

17 A We provide services to corporate clients, private
18 individuals. We do some work for municipalities. A lot of
19 work, a lot of bank work. We do work for lawyers,
20 accountants.

21 Q Any work for municipalities?

22 A We do some work for municipalities including we've
23 recently appraised some -- a school. We appraised a storage
24 truck, like public works facilities, those kind of properties,

25 yes.

1 Q How do the -- how does the appraisal at Hilco work? Do
2 you work individually, or do you work in teams?

3 A Generally, you know, we'll assign -- if I get an
4 assignment for a client I'll assign it to a staff appraiser.
5 But often we get portfolio assignments where we'll have, you
6 know, 50 or 100 assets to -- to value in three -- two to three
7 weeks.

8 And so in those cases we'll -- we'll pull in resources
9 from other offices or, you know, work with some
10 subcontractors.

11 Q How about for the DIA project? Were -- were you -- did
12 you work on this individually or did you enlist the assistance
13 of others?

14 A So in this case we worked with another group out of our
15 New York office. They were -- they were the lead there Chris
16 Harland and one of his staff's appraisers Mark Grant assisted
17 in the assignment.

18 Q Was there any reason you sought the assistance of Mr.
19 Harland?

20 A Mr. Harland was a -- a good choice for us in this
21 assignment because he has actually appraised museums before.
22 So he had some experience there. And that helped us divide
23 the tasks to meet a delivery deadline.

24 Q Do you have prior experience as an expert witness?

25 A Yes, I do.

1 Q How many times have you been qualified as an expert
2 witness?

3 A Roughly 20.

4 Q In what subjects?

5 A In -- as a real estate appraiser.

6 Q Have you provided in Court testimony in connection with
7 those qualifications as an expert witness?

8 A Yes, I have.

9 Q In how many of those?

10 A All of those.

11 Q All 20?

12 A All 20.

13 Q Have you appeared as an expert witness in any federal
14 proceedings, federal bankruptcy proceedings?

15 A Yes, in one case.

16 Q Which case was that?

17 A It was a case involving a -- I was retained by a bank to
18 appraise a special use property. It was like a dance studio
19 with a boarding house component that was being -- there was a
20 valuation dispute.

21 Q Are there different types of appraisals? Different types
22 of valuations that clients of Hilco's come to you to request?

23 A Yes. We get requests for different values based on what
24 the client's needs are. And so we can provide a range of

25 scope of services.

1 Q And what are the types of appraisals that you typically
2 provide?

3 A So appraisals can be for market value. We do some
4 liquidation work, disposition work, value and use for
5 accounting purposes, and going concern values for like hotels.

6 Q You said market value. Do you mean fair market value?

7 A Fair market value, yes.

8 Q And what kind of appraisal was solicited from you in
9 connection with your retention here?

10 A In this case we provided a fair market value opinion.

11 Q Okay. Are there different methodologies that can be used
12 to arrive at a fair market value valuation?

13 A Yes.

14 Q What are they?

15 A So there's three main approaches to value, a cost
16 approach, sales comparison approach, and an income approach.

17 Q Can you generally describe the methodology associated
18 with the cost approach?

19 A The cost approach is you -- you estimate the replacement
20 cost of an asset. You deduct accrued depreciation and to that
21 you add the value of the land to arrive at an opinion and
22 value.

23 Q And can you generally describe the methodology behind the
24 sales comparison approach?

25 A So the sales comparison approach is based on

1 substitution. So you're looking for similar properties that
2 have sold that have like characteristics. And you compare
3 those to your property to conclude an opinion and value.

4 Q You use comparable sales?

5 A Comparable sales, yes.

6 Q And how about the income capitalization approach?

7 A So the income or capitalization approach is based on a
8 property's ability to create and sustain income. And so it's
9 based on cash flow. And capitalizing the cash flow to an
10 appropriate opinion -- opinion of value.

11 Q Are these three approaches, the three you just described,
12 are these generally accepted methodologies in the appraisal
13 profession?

14 A Yes.

15 Q And do you follow them regularly in connection with your
16 business?

17 A Yes, we use them daily.

18 Q Okay. Did you -- by the way did you complete all three
19 of those in connection with your exercise in this case, your
20 assignment for the DIA?

21 A For this assignment we completed the cost approach, the
22 sales comparison approach, but we did not complete the income
23 approach.

24 Q And why not? Why did you not choose to undertake to
25 complete an income capitalization approach?

1 A For the purpose that the subject property is a special
2 use asset, that's built for use and not to create cash flow or
3 for cash flow purposes.

4 MR. IRWIN: Your Honor, at this time I would move to
5 qualify Mr. Satter as an expert in real estate valuation.

6 THE COURT: Any objections?

7 MR. BRILLIANT: No objection, Your Honor.

8 THE COURT: You may proceed.

9 Q Mr. Satter, back to our story. Hilco was retained by the
10 City of Detroit when?

11 A I think in June of this year.

12 Q Okay. And what was the nature of that engagement?

13 A The nature of the engagement was to provide a fair market
14 value opinion for the Detroit Institute of Arts.

15 Q What did you know about the -- may I refer to it as the
16 DIA?

17 A The DIA.

18 Q What did you know about the DIA at the time?

19 A Well, we were familiar with the DIA as being a art museum
20 in Detroit.

21 Q Did you know anything about the -- the land or the
22 improvements at that time?

23 A Initially, no.

24 Q Okay. What did you come to learn about the -- the

25 characteristics of the building itself and the real property?

1 A So in the course of -- of completing the assignment, you
2 know, we came to understand that the DIA is a very -- it's a
3 world class art museum. It's a wonderful building of a
4 historic nature, about 462,000 odd square feet above grade.
5 About 14 acres of land located in the midtown market area
6 within a historic cultural district.

7 Q When was it constructed?

8 A The original section of the museum was constructed in the
9 late twenties. And there were two additions, 19 -- both in
10 the late sixties. And then there was a small addition in
11 2002.

12 Q Was there -- was that a renovation, or -- or an addition?

13 A Yeah, I think it was a small addition they put on to --
14 for the purpose of warehousing the art while they went through
15 a renovation that they were proposing.

16 Q Okay. And how many acres was the real property?

17 A A little over 14 acres.

18 Q How many parcels?

19 A I think it was like eight actual tax parcels.

20 Q Okay. And what -- were they -- were they contiguous,
21 were they separated, what was the nature of the parcels?

22 A There's three main parcels that the DIA building sits on
23 and John R. Road runs between the building and its parking lot
24 to the east.

25 Q Okay. So when you get the assignment, describe for the
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 177 of 256

1 Court what you do to gather information so you understand what
2 it is that you're going to be able to need -- or what you will
3 need to approach the project.

4 A All right. So the first thing we did, we reached out to
5 our property contact which was Mr. Bowen, Robert Bowen the
6 CFO.

7 Q Who is Mr. Bowen?

8 A I believe he's the CFO. And to discuss an opportunity to
9 come and -- and tour the museum to gather physical information
10 on the property, understand its history, its capital
11 expenditures, things that relate to value, understanding how
12 the systems work. And we were able to perform that inspection
13 in -- in late June.

14 Q Did you inspect the interior and the exterior of the
15 building?

16 A Yes.

17 Q And why was that?

18 A To get a sense of its physical characteristics and also
19 assess its overall property condition and quality.

20 Q Did you interview anyone else in connection with your
21 preliminary investigation?

22 A Yeah. Most of my time was spent with Cedric Alexander
23 who is the engineer, lead engineer who has knowledge of the
24 systems, capital expenditures, and somewhat the history of the
25 property.

1 Q Okay. How about public records or other records? What
2 records did you seek out to aid you in this investigation?

3 A We looked at county records and some city records. We
4 looked for -- we got a title report we received. We looked at
5 on line information in general about the midtown market area,
6 the DIA, other information we could get out of there just to
7 fill in the blanks.

8 Q Floor plans?

9 A We received floor plans from the engineer. We received a
10 survey of the property.

11 Q How about census data?

12 A Yeah, we pulled census data to understand the
13 demographics and population trends. The income
14 characteristics of the local area. That was sourced through
15 Claritas and also through on line records and through the
16 county.

17 Q What kind of market investigation did you perform, both
18 -- both local markets and -- and broader than that?

19 A We've looked, you know, locally for sale activity for
20 land sales. We also looked for improved sales of an
21 institutional nature that would be comparable to the DIA. And
22 having finding very limited data, we expanded that search
23 nationally to -- to comprise a data set for analysis.

24 Q Are you familiar with the term highest and best use?

25 A Yes.

1 Q And how is that term used in your profession?

2 A So highest and best use is a principal for land use
3 assuming that all things, you know, given there's a highest
4 and best use of the land based on its -- on its -- on legal
5 characteristics, you know, it's physical characteristics, and
6 then financial feasibility.

7 Q Does highest and best use analysis give you insight into
8 who potential purchasers might be?

9 A Yes.

10 Q Okay. Given the DIA's characteristics here, did you
11 perform a highest and best use analysis on the DIA as the
12 subject property?

13 A Yes, we did.

14 Q And what was your -- what was the analysis there? What
15 were your opinions?

16 A So our conclusions for the highest and best use of the
17 property as improved was for continued institutional use as
18 one likely scenario. And we also concluded a secondary
19 scenario, assuming that there was, you know, another caveat
20 that was not a institutional user, or buyer, the next most
21 likely buyer would be an investor.

22 Q So what do you -- what do you mean when you say
23 institutional user or institutional buyer? Are you thinking
24 about someone specific in -- in this community, or do you mean
25 something different?

1 A So an institutional buyer would be like Wayne State for
2 instance would be a likely buyer given their -- their campus
3 is there and they're the largest land owner in the area.
4 Perhaps one of the other colleges in the immediate area
5 creative studies, or one of the other state schools may want
6 to have a larger kind of anchor here inn Detroit, be part of
7 the renaissance. Those types of buyers.

8 Q Okay. If there were not a -- an institutional buyer like
9 a Wayne State that you're describing, what is the next most
10 likely set of buyers for the property?

11 A If it's not going to be a user, it's going to be an
12 investor.

13 Q Okay. And are there different methodologies or different
14 analyses that you would want to run if you were looking at one
15 as to the other?

16 A Yes. We'd look at different types of data for -- for
17 each potential user.

18 Q Okay. Which of the methodologies that you have described
19 here corresponds to a potential or hypothetical purchase by an
20 institutional purchaser?

21 A So the cost approach presented is -- was done as improved
22 as -- as a museum property. And part of the sales comparison
23 approach also we analyzed the property as -- as it currently
24 is -- is improved.

1 institutional purchaser?

2 Yeah. Those would -- those would be institutional
3 purchasers and --

4 Q I -- I -- I misspoke, I'm sorry. Did you also run an
5 analysis for a potential investor purchaser?

6 A We did. We looked at comparable sales in the Detroit
7 market to try and understand the pricing for large assets
8 acquired by investors.

9 Q Okay. So let's take the cost approach first and the
10 analysis with a hypothetical institutional purchaser. Can we
11 do that?

12 A Sure.

13 Q Okay. Can you walk me through the first step of the cost
14 approach for an institutional purchaser?

15 A Sure. So the cost approach, you know, we -- the first
16 step is to estimate the replacement cost of the facility and
17 in that case we're looking at published cost data and we
18 looked at -- from two sources. And we looked at general
19 information on -- on museums that have been built within the
20 last ten, 12 years that would give us some sense on a price
21 per square foot. We also did speak to some architects
22 generally on ranges of costs that they have been involved in.

23 Q How about land value? Do you look at land value?

24 A Yeah. We -- we did look at land value. We estimated the
25 land value based on comparables on -- on land sales within the

1 Detroit market area. We had a sale in the midtown area over
2 by the DMC campus and another one on -- on Woodward. And a
3 couple sales in other outlying neighboring communities.

4 Q What -- what are the characteristics of the parcels that
5 you are looking at in connection with this aspect of the cost
6 approach?

7 A So the characteristics of the land sales we were looking
8 for lands, large land sales. You know, the DIA is on 14.5
9 acre -- 14.05 acres. And so we were looking for large sales
10 similar to that in nature. You know, located in the Detroit,
11 you know, urban market.

12 Q And were you able to identify sufficient comparable land
13 sales?

14 A We feel we found five sales that gave us a -- a range of
15 value from which we could derive a -- a credible opinion of
16 value.

17 Q Do you recall what the range of value was?

18 A It was pretty wide. It was something like 50,000 to, I
19 think, 1.9 million an acre. Given -- I mean those were the
20 sales we were able to confirm, yes.

21 Q Okay. And from there how did you determine what the
22 comparable land value was going to be for the DIA?

23 A So we considered the sales and gave most weight to the
24 sales in the midtown area. There was one on like I said over

1 part of a park. And in the other one they -- is on Woodward
2 Avenue and which is a pending sale.

3 Q Okay. And do you recall what your opinion was as to the
4 value of the land in connection with looking at these five
5 comparables?

6 A Yes.

7 Q And what was that?

8 A That was \$500,000 an acre.

9 Q Okay. So what is the math then? When you're at \$500,000
10 an acre do you have a final land value that you're able to
11 derive from there?

12 A About \$7,000,000 rounded.

13 Q Okay. And that's just the acreage times the \$500,000 per
14 acre?

15 A Correct.

16 Q Okay. You got the land value. Now tell me about how you
17 calculate the replacement value. I'm sorry, the replacement
18 cost.

19 A And so replacement cost, as I mentioned we -- we sourced
20 two published cost source. One the Marshall valuation service
21 which is a published cost manual that we use daily.

22 Q But what -- what -- what is it? I'm sorry, what is the
23 Marshall valuation service?

24 A So Marshall valuation service is a published cost data

25 source that we subscribe to. They aggregate construction cost
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 184 of 256

1 data on every property type. On churches, museums, office
2 buildings, retail. And that information is aggregated and
3 they develop a base cost from which we add refinements for
4 various factors.

5 Q Okay. Were there other data sources that you considered
6 in connection with trying to determine replacement cost?

7 A Yeah. We considered the -- the Department of Interior
8 publishes a -- a cost manual. And in that they reference
9 museums. And that had a range of value that we considered.

10 Q Did you consider any other market data in connection with
11 museum construction costs?

12 A We did. We -- we were able to source a few museums that
13 have been built like in the last ten to 12 years. And those
14 figures which we are not -- we've never -- we did not get
15 copies of actual construction statements. We got figures
16 which we thought were credible, we considered those.

17 Q And what did you do with that data? The data from the
18 three sources that you've described?

19 A So we considered those three sources and we concluded a
20 final replacement cost.

21 Q And what was that final replacement cost?

22 A So the final replacement cost for the DIA building and
23 the site improvements including the parking lots, et cetera,
24 we concluded at \$242,000,000.

25 Q And what does that mean? That's the cost to replace
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 185 of 256

1 what?

2 A That would be the cost to build a new museum on that campus
3 of that size.

4 Q Okay. What do you do next? Now you have a replacement
5 cost. What do you do next in the cost approach as a
6 methodology?

7 A So the second step is to estimate accrued depreciation.

8 Q Okay. What are -- are there more than one category of
9 accrued depreciation?

10 A So -- so accrued depreciation is -- is you have
11 bifurcated the two components physical depreciation and
12 obsolescence.

13 Q What is physical depreciation?

14 A So that's just a wearing out of the building. You know,
15 it's kind of a function of its age, its condition, any
16 deferred maintenance items that need to be taken care of.

17 Q And how -- how -- how conceptually do you go about
18 calculating depreciation based on physical deterioration?

19 A So we look at factors such as the actual age of the -- of
20 the -- of the building. So in this case like the weighted
21 chronological average of the DIA is 66 years.

22 Q How did you determine that?

23 A So it's a weighted average based on the various
24 components of the building. So the -- the interior, original

25 section was built in the late twenties. So you take that age
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 186 of 256

1 times its square footage and then we did that for the two
2 wings and also for the new small piece.

3 Q Are you familiar with the term effective age?

4 A Yes.

5 Q What does effective age mean?

6 A So effective age is a measurement of the age of the
7 property relative to its useful life. And in this case when
8 -- although the weighted average of the building is 68 years,
9 you know, it has been well maintained. And they had done some
10 renovation work over the years.

11 And so in my opinion the building projection age of 15
12 years. So we know it's not new, we know it's not 66. So
13 somewhere in there is where, you know, in our opinion the
14 effective age is and that in our opinion is 15.

15 Q And how did you use the building's effective age in
16 connection with calculating physical depreciation?

17 A So in -- so Marshall valuation service also as part of
18 the publication provides economic life estimates for
19 properties. And those can range based on the quality and the
20 condition and type of property. And in this case for museums
21 of -- of the high quality that we -- we classified the DIA,
22 it's 60 years.

23 Q And so what did you do with the 15 years of effective
24 age?

25 A So to -- so to compute the physical depreciation we
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 187 of 256

1 estimated from the physical depreciation, we divided the 15 by
2 60 to estimate physical depreciation of 25%.

3 Q Okay. So that's one component of depreciation, physical
4 depreciation, that's 25%?

5 A Right.

6 Q What is the second component? Obsolescence I think you
7 called it.

8 A Oh, obsolescence -- excuse me, is the other form of
9 accrued depreciation.

10 Q And how did you calculate obsolescence in this case?

11 A So for obsolescence ideally you want to try and extract
12 that from the market. It's a loss that's due to functional
13 either inadequacies, deficiencies, over improvements of the
14 asset, or external forces which were related to market
15 conditions, over supply, under supply, or in this case
16 property type as well. And those two components in our
17 analysis formed the obsolescence estimate.

18 Q Okay. And what did you do here? What did you do
19 specifically to calculate obsolescence here?

20 A So we were able to find in the -- our search of museum
21 asset sales, two sales that were built fairly new, one in 2008
22 and one in 2001, I believe. And both of those museums we were
23 able to get the -- the cost new and we were able to understand
24 the land value. And they recently sold.

1 -- for those sales, or for those museum, you know,
2 institutional cultural center type sales.

3 Q Why did you pick those two properties?

4 A Well, we picked those two properties because one, they --
5 they're fairly new, so they have a low amount of physical
6 depreciation which wouldn't necessarily have to be, you know,
7 subjectively, you know, parsed.

8 We could rely on the fact that since they're fairly new,
9 they would have low depreciation and which would mean that the
10 -- the majority of the -- of the loss in value would be due to
11 obsolescence.

12 Q So these are properties that are selling for much lower
13 than they were purchased, is that right?

14 A That's correct.

15 Q Okay. And what was the obsolescent rate that you
16 observed in the two comparable properties?

17 A So the obsolescence, just the obsolescence portion ranged
18 I think 58 to 66% of the value.

19 Q Were these special use properties?

20 A They were.

21 Q Okay. So what did you do then with the two components of
22 depreciation that you had calculated?

23 A So we concluded 60% as the obsolescence for the DIA based
24 on those two asset sales. And then we added that to our

25 estimate of physical depreciation of 25 to conclude a total

1 accrued depreciation of 85%.

2 Q Okay. And what did you do with the 85% depreciation
3 rate?

4 A So we multiply that times the cost new to conclude a
5 depreciated value of the improvements. And to that we add the
6 value of the land to conclude a final opinion of value by the
7 cost approach.

8 Q Okay. And can you summarize the math for us? Tell us --
9 tell us roughly what those numbers added up to be?

10 A Yeah. So the land value was 7,000,000 and I believe the
11 depreciated improvement value was roughly 36,000,000. And our
12 -- our value by the cost approach was -- we estimated at
13 \$43,000,000.

14 Q And was that your final valuation under the cost
15 approach?

16 A Yes.

17 Q And the cost approach was -- assuming that there would be
18 an institutional investor, right?

19 A Correct.

20 Q You -- you mentioned earlier a -- a scenario that you ran
21 or contemplated in connection with a situation where there
22 isn't an institutional purchaser. Do you recall that?

23 A I do.

24 Q Can you -- can you describe that process for us?

25 A So if we -- if the sale of the -- of the facility is not
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 190 of 256

1 to a user who is going to continue its use for institutional
2 purposes, it's our opinion that the next buyer would be an
3 investor.

4 And so in this case we looked at the sales of -- of large
5 investor type assets, or large assets purchased by investors
6 in the Detroit market area.

7 Q What were the characteristics of those properties that
8 you were seeking to use in connection with this sales
9 comparison approach?

10 A So the -- the characteristics that we looked for were
11 large assets like the DIA, 460,000 square foot building that
12 would be vacant. And it would require significant capital
13 expenditures to repurpose for, you know, office or a hybrid of
14 uses. And primarily, you know, we wanted to stay in the
15 Detroit market.

16 Q Were you able to locate such properties?

17 A We did find four sales that -- that were located in the
18 downtown market.

19 Q And what conclusions did you draw about those four sales?

20 A Those sales ranged in value from I think 20.00 to \$48.00
21 a square foot.

22 Q Were you able to determine a value per square foot for
23 use for the DIA comparison?

24 A Yes.

25 Q And what was that?

1 A And so we -- we considered the asset and given the DIA's
2 characteristics we felt that towards the higher end of the
3 range was appropriate for the property given it has a larger
4 amount of land and even though it's a three story structure, a
5 lot of the sales were multi-story type properties. We felt
6 the \$40.00 a square foot was a reasonable number.

7 Q And -- and just doing the math, what is the -- what is
8 your final opinion of value using the comparative sales
9 approach?

10 A That's 18.5 million dollars.

11 Q Okay. So -- so 18 -- that was 18.5, we had forty-three
12 before. Eighteen is less than half of -- of forty-three. Did
13 that surprise you?

14 A You know, it doesn't really. We have data sales that
15 kind of corroborate that. Within our data set we have three
16 museum, you know, institutional type purchases in downtown
17 Manhattan that we included for the purpose of demonstrating
18 that.

19 Two were purchased by institutions for continued use, and
20 one was purchased by an investor. And the investor sale is
21 roughly half.

22 Also our familiarity just with investors and their
23 abilities to -- and the -- and the requirements for return on
24 investment will require -- will not allow them to pay as much

1 by an investor the property is going to go on the tax rolls.

2 And now you have an eighteen and a half million dollar
3 asset on the tax rolls paying at 8 1/2% about a million five
4 in taxes per year. And if you capitalize that at a -- at a
5 very, you know, conservative rate of 10%, you're talking about
6 \$15,000,000 or so.

7 So really the delta becomes from the tax burden that is
8 imposed on a private investor or investor type as opposed to
9 someone who's a non-profit.

10 Q How about cost of repurposing. Does that play into this
11 at all?

12 A Yeah. We considered that. You know, it's a beautiful
13 building and it's got wide halls and, you know, nice spaces.
14 But it would be a real challenge to repurpose that and also
15 there's -- there's still a lot of kind of question marks and
16 some caution because, you know, it's in a historic district
17 and whether or not, you know, it will be allowed -- what
18 allowable uses, you know, remained, you know, to be answered
19 by the city.

20 Q Sir, what -- what is your final opinion as to market
21 valuation for the DIA property?

22 A We've put in a range of value for the DIA based on our
23 two scenarios of potential buyers. We concluded an eighteen
24 and a half million dollar value for an investor purchaser and

1 continued use -- user type purchaser.

2 MR. IRWIN: Okay. Thank you, Your Honor. No
3 further questions.

4 THE COURT: Okay.

5 MR. BRILLIANT: May I approach, Your Honor? I
6 apologize for not having a fancy notebook, Your Honor, but
7 we're from out of town, don't have a lot a resources here.

8 THE COURT: That's okay.

9 CROSS EXAMINATION

10 BY MR. BRILLIANT:

11 Q Good afternoon, Mr. Satter.

12 A Good afternoon.

13 Q Now your primary work for appraisals is in the Chicago
14 market, isn't that right?

15 A That's correct.

16 Q And you do most of your work in that region?

17 A A good percentage.

18 Q Well, when you say a good percentage, is it more than the
19 majority?

20 A Yes.

21 Q And you're not a museum appraisal specialist, isn't that
22 right?

23 A I am not.

24 Q And in fact this is the first museum appraisal you've
25 ever done, isn't that right?

1 A That's correct.

2 Q And appraising a museum is harder than appraising other
3 properties, isn't that right?

4 A I would say that the museum is just a different special
5 use type property that requires a similar methodology.

6 Q But it's -- but it's harder than appraising a -- a
7 property where there's a lot of easy comparables, isn't that
8 right?

9 A Absolutely.

10 Q And even among museums, all museums aren't the same,
11 isn't that right?

12 A That is true.

13 Q I mean there's many different kinds of museums?

14 A Yes.

15 Q There's art museums, right?

16 A Yes.

17 Q Historical museums?

18 A Yes.

19 Q Science museums?

20 A Yes.

21 Q Sports museums?

22 A Yes.

23 Q And even within, you know, art museums there are
24 different types of art museums, isn't that right?

25 A I suppose.

1 Q Well, there's museums of contemporary art, right?

2 A Yes.

3 Q And then there's large museums and small museums, right?

4 A Correct.

5 Q And then different types of museums have different --
6 need different features, isn't that right?

7 A I think that because they're all special use properties
8 that all of the types that you've mentioned all have unique
9 characteristics.

10 Q Okay. And they -- and they all need to have different
11 features, right?

12 A Yes.

13 Q And with -- and I -- I saw you here. You heard Ms.
14 Erickson's testimony, is that right?

15 A I heard just a very brief portion of it.

16 Q Okay. And were you here when she said this was an
17 encyclopedic museum? Did you hear that?

18 A I'm -- I'm not sure if I heard that.

19 Q Okay. But this type of museum needs special types of --
20 of security, right?

21 A Yes.

22 Q And it also needs to have special type of climate control
23 for the building, right?

24 A Sure.

25 Q And it needs all that to protect the art, right?

1 A Of course.

2 Q And it also needs to have certain types of -- of fire
3 alarms?

4 A Yes.

5 Q And -- and also fire protection equipment, right?

6 A And it has all that.

7 Q And it has to be dry rather than wet, isn't that right?

8 A I think it has both types.

9 Q And it also needs lots of display cases?

10 A It does have lots of display cases, yes.

11 Q And -- and all kinds of other built in things in order to
12 show the art, isn't that right?

13 A Yes.

14 Q And I think you mentioned earlier it has high ceilings
15 and -- and wide hallways?

16 A Yes.

17 Q And that's all necessary in order to -- to show the art,
18 right?

19 A Yes.

20 Q Now you -- you would agree with me that, you know, this
21 particular property, and you refer to it as the DIA which can
22 be a little bit confusing, but for purposes of -- of this
23 cross examination we'll just call it the property.

24 All right. Now with respect to this, you know, property,

25 you agree that, you know, it houses a -- a very high end

1 museum, isn't that right?

2 A Yes.

3 Q And there are other high end museums in the United
4 States, right?

5 A Sure.

6 Q I mean there's the Getty Museum, right? You're familiar
7 with that one, aren't you?

8 A No.

9 Q No? Okay. Are you -- are you familiar with the Eli
10 Broad Museum?

11 A I'm not.

12 Q You're not? Are you familiar with the Chicago -- closer
13 to home, you're familiar with the Chicago Art Institute,
14 right?

15 A Many times.

16 Q Okay. And -- and these are all -- well, at least with
17 Chicago Art Institute you'll agree with me that's a high end
18 museum, right?

19 A Yes, sir.

20 Q In many respects it's similar to the DIA?

21 A I would think so.

22 Q Now in doing your appraisal you searched for comparable
23 sales, right?

24 A Yes, sir.

25 Q And you didn't find any sales of -- of buildings that are
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 198 of 256

1 like the DIA, or you know, this property, right? You didn't
2 find any sales that are like this property, isn't that right?

3 A We did not, did not.

4 Q And you didn't find any, you know, in any year, right?

5 It's not you didn't find one in the last couple years, you
6 didn't find any for any years, isn't that right?

7 A Yeah, we did not have success finding comparable sales.

8 Q So as I said, so it's not easy to, you know, appraise a
9 museum, right, because there's not a lot of comps? Do you
10 agree with that?

11 A I agree with that.

12 Q Okay. Now, you know -- you know, it -- I believe that
13 you agree that this is a beautiful building, right?

14 A Yes.

15 Q It has a magnificent white marble facade?

16 A Yes, it has a white marble facade.

17 Q And it has a great location, doesn't it?

18 A It is a good location.

19 Q It's -- it's -- it's better than good. Did you hear Ms.
20 Erickson testify about the location and -- and where it's
21 located?

22 A Ms. Erickson obviously is -- works there and is very very
23 enchanted with the place. But I agree it sits in a nice
24 downtown midtown area and, you know, it's a beautiful little

25 cultural historic area, yes.

1 Q Okay. Well, so how -- how many appraisals have you done
2 in Michigan in the last two years other than this one?

3 A I would say we've done about --

4 Q No, no, no, not we. How many appraisals have you, sir,
5 done in Michigan in the last two years?

6 A Personally about ten.

7 Q Ten, okay. And how many have you done in Detroit?

8 A In the city only one.

9 Q Okay. And what -- and what was that appraisal?

10 A That was a -- it was a fast food restaurant.

11 Q And when was that?

12 A That was this summer.

13 Q And did that have a replacement value of \$243,000,000?

14 A The owner was hoping that we would come in at that, yes.

15 Q Now the museum has -- has -- has very good access to the
16 highways, doesn't it?

17 A Yes, that area does.

18 Q It has a big parking lot, doesn't it?

19 A It has a -- yes, it does have a parking lot.

20 Q Okay. Now the -- the museum was expanded and renovated
21 between 2002 and 2008, isn't that right?

22 A That is correct.

23 Q Okay. And expansion and renovation costs 158.2 million
24 dollars, right?

25 A I think that was the total cost of the project, yeah.

1 Q Yeah. For both the expansion and the renovation?

2 A Right.

3 Q 158.2 million dollars?

4 A Correct.

5 Q And that is in, you know -- you know, real dollars
6 expended at that point in time, right?

7 A That's correct.

8 Q And there has been inflation since then?

9 A Yes, sure.

10 Q And the -- and the replacement cost for just that would
11 have increased over the amounts that were actually expended in
12 today's dollars, isn't that right?

13 A I guess I would agree with that, yeah.

14 Q Okay. And did you do -- and you didn't do any analysis
15 to try to determine what that 158.2 million dollars would be
16 in today's dollars, did you?

17 A I did not.

18 Q Now the -- the expansion included a 31,383 foot addition
19 to the south wing, isn't that right?

20 A That's correct.

21 Q And after the -- the renovations, the property is in good
22 condition, isn't it?

23 A Yes.

24 Q Okay. And you walked through the property, right?

25 A I did.

1 Q And none of the other members of your team went through
2 the property, it was just you, right?

3 A They had visited the museum before.

4 Q Okay. But when you had the walk through in this June, it
5 was just you, right?

6 A Just me.

7 Q And Mr. Harland wasn't there, isn't that right?

8 A He was not with us, no.

9 Q Okay. And I believe you testified earlier you believe
10 the -- the building has a economic life of 45 years?

11 A No. We believe the building has an economic life of 60
12 years.

13 Q You say -- you say remaining or --

14 A Remaining.

15 Q Oh, remaining.

16 A The building.

17 Q The building has a remaining economic life of 45 years,
18 isn't that right?

19 A That would be the math, correct.

20 Q All right. And you also believe that there's only
21 minimal deferred maintenance on the building, isn't that
22 right?

23 A Well, there's deferred maintenance on a roof section and
24 they were tuck pointing the -- the original Cret portion and

25 they had a cap backs program that is outlined in one of the
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 202 of 256

1 exhibits, one of the addenda. But it's -- so it's, you know,
2 I think it's broken out in the analysis.

3 Q Right. But you -- you believe that there's only minimal
4 deferred cap -- cap backs and in fact you think it's only
5 about \$4,000,000, isn't that right?

6 A That's correct, yeah.

7 Q Okay. Now the -- the original part of the building was
8 designed by the renown French architect Paul Philippe Cret,
9 isn't that right?

10 A That's correct, okay.

11 Q Now are -- are you familiar with -- with Mr. Cret's work?

12 A Not extensively, no.

13 Q After you reviewed the property -- or after you were
14 retained, did you do any analysis to learn about the
15 architect?

16 A No, I did not.

17 Q So you know he's from France though, right?

18 A Well, the name sounds French.

19 Q So he's -- so did you know anything about -- do you know
20 anything about -- about Mr. Cret?

21 A I know that he designed the -- the interior section of
22 the -- of the original portion of the museum, sir.

23 Q And that's all you know about him?

24 A Well, yes.

25 Q Do you know what prizes he won?

1 A I do not.

2 Q Do you know about his other famous buildings?

3 A I am not aware.

4 Q You aware about any of the war memorials that he
5 designed?

6 A I am not.

7 Q Now the -- the north and the south wings they were
8 designed by Gunnar -- Gunnar Birkerts, isn't that right?

9 A It sounds -- yes. That sounds right.

10 Q Well, do you know that or it just sounds right?

11 A I -- I -- it sounds familiar.

12 Q Okay. And do you know who he is?

13 A I do not.

14 Q Do you know whether he's world famous?

15 A I do not know.

16 Q Maybe this one will be a little easier. The 2002 to 2008
17 renovations, do you know who oversaw those?

18 A The current CFO.

19 Q No, who was the architect for them?

20 A I do not know the architect's name.

21 Q If I told you it was Michael Graves, would that sound
22 familiar?

23 A I do not recall.

24 Q Are you familiar with Michael Graves?

25 A I am not.

1 Q So you don't know what his stature is in -- in the United
2 States or among architectural circuits?

3 A No, I do not, sir.

4 Q Okay. Now you would agree that the property is a first
5 class museum property, wouldn't you?

6 A I would.

7 Q And you would agree that the property has historic
8 architecture, right?

9 A Yes, I would.

10 Q And isn't it the case that the property contains
11 desirable architecture that is no longer feasible based on
12 current costs?

13 A That is correct.

14 Q And in fact it's a -- it's a local landmark, isn't it?

15 A It is a landmark, yes, federal -- it's on the federal
16 registry.

17 Q Now and -- and the property has numerous built ins, isn't
18 that correct to showcase the art?

19 A And those are -- and those are really, you know, property
20 that is part of the art -- art museum itself. It's not real
21 estate.

22 Q But -- and you -- and you didn't value those, right?

23 A Did not.

24 Q Okay. So -- so you didn't value the -- the shelves?

25 A No.

1 Q The display cases?

2 A We did not.

3 Q What about the -- the theater with the -- with the seats?

4 A You know, the space -- probably would include the space,
5 the theater space, but no, we didn't really get into the
6 personal property those portions of the -- of the asset.

7 Q And you didn't -- and you didn't value the -- the
8 specialized lighting?

9 A We did not.

10 Q Okay. Now you -- you agree that the highest and best use
11 of the property is an art museum, right?

12 A We included the highest and best use of the property is
13 for continued use as a institutional facility, yes.

14 Q Well, I'm -- I'm asking you a slightly different
15 question. So -- so do you -- do you believe that the highest
16 and best use of this property is continuing as an art museum?

17 A Well, our assignment was to value the property as if it
18 was vacant. It was not to value the property as if it's still
19 a functioning art museum. We were hired with the caveat that
20 it's vacant and then all art or any personal property,
21 anything at all that resembled anything to do with the art
22 business was -- was gone.

23 And you basically had an empty building that the next
24 user was going to come along and take possession of and do

25 whatever it is that they're going to do. They could be art --

1 art people, they could be, you know, railroad museum. I know
2 you mentioned other types of museums. It could be any one of
3 those number of -- of purchasers. It could be Wayne State.

4 So those were the kind of users. And so in our highest
5 and best use, we assumed it was going to be that kind of user.
6 We didn't know and really if it's not the DIA art in there, I
7 really don't think it's going to be an art museum.

8 Q All right. So I'll -- I'll ask you the question again
9 and maybe this time you'll -- you'll -- you'll answer it for
10 me. So sitting here today, leaving aside what you were told
11 to do by the -- by the city in terms of your appraisal,
12 sitting here today, don't you believe that the highest and
13 best use of this property is as an art museum?

14 A For continued use under -- under no duress from the
15 bankruptcy and the whole -- all that, I would say yes.

16 Q Leaving aside the bankruptcy. We're just talking about a
17 piece of property now, okay. We're talking about a piece of
18 property.

19 A Well, it's -- it's hard to say that, you know, our -- our
20 opinion is that the highest and best use of the property is
21 continued use as a museum given --

22 THE COURT: All right. Let me interrupt. Is it
23 your testimony that the highest and best use might include an
24 art museum, but might include any other kind of institutional

25 use?

1 A Yes, sir.

2 THE COURT: Let's move on.

3 MR. BRILLIANT: Okay.

4 Q Now -- now, sir, you're aware that the -- the city wants
5 to transfer the property to the DIA, isn't that right?

6 A Yes, I read something about that.

7 Q And if it's transferred to the DIA it would continue to
8 be used as an art museum, isn't that right?

9 A As I understand it under the plan that is -- that is the
10 intent.

11 Q Now, sir, I want going to ask you about your report. You
12 -- you did give a report, an expert report, is that right?

13 A Yes, sir.

14 Q And that contained your opinions?

15 A Yes, sir.

16 Q And you worked hard on that, right?

17 A Yes, sir.

18 Q And you were careful to make sure that it was accurate?

19 A Yes, we did.

20 Q And -- and the reason for that is because you -- you knew
21 that it was going to be shown to the Judge and -- and that the
22 city was going to ask the Judge to rely on it, isn't that
23 right?

24 A That's correct.

25 Q Now isn't it true that there's numerous errors in your

1 report?

2 A I'm aware of one error that we -- that we found.

3 Q Okay. Well, let's see, we'll go through it and we'll --
4 and we'll see. That's Exhibit 406? Okay. Well, the first
5 thing is -- is there an inconsistency in your report as to
6 what your opinion is?

7 A I mean our opinion is -- we -- we gave two opinions of
8 value. We gave an opinion of value -- we give a range of
9 value. We concluded a value as an institutional facility. So
10 I'm not aware -- I'm not aware --

11 Q So, all right, you're not -- you're not aware of an
12 inconsistency in your report with respect to your opinion, is
13 that right?

14 A That's correct.

15 Q Okay. Can you turn to Page 4 of your amended expert
16 report, please? Can you highlight the first sentence, please?
17 The first sentence after conclusion. After conclusion.

18 Now isn't it true, sir, that your opinion is that subject
19 to certain assumptions, limiting conditions, certifications,
20 and definitions set forth in the appraisal, I have concluded
21 that the market value of the property is \$43,000,000. Now
22 that's your opinion, right? That the property is worth
23 \$43,000,000?

24 A Yes, that's one of our conclusions.

25 Q But that -- that -- that is your ultimate opinion of the
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 209 of 256

1 value of the -- of the fair market value of the property,
2 right?

3 A That is an opinion of value, yes.

4 Q Okay. Can we turn to -- to Page 66 of the -- of the
5 attachment, please? Sixty-six on the bottom. Can you
6 highlight the bottom paragraph, please? And keep going to the
7 end -- to the end of the page.

8 Now, sir, after your amended report you attached, you
9 know, your valuation, isn't that right?

10 A That's correct.

11 Q And on Page 66 of your valuation it says, based on our
12 analysis of the property as presented in this summary report,
13 we have estimated the as is market value of the fee simple
14 real estate -- fee simple estate for the subject property as
15 of June 23, 2014 at \$43,000,000. Do you see that?

16 A I do.

17 Q And that states your opinion of the -- of the -- of the
18 value of the property, correct?

19 A It does.

20 Q Now can you turn to Page 4 in this summary report? You
21 know -- you know, and I'll just skip that question. But --
22 but then if you go to the -- on Page 2 of the -- of the
23 amended expert report, you know, for summary of opinions it
24 says the market value of the property in question falls

1 circumstances of the sale. Do you see that?

2 A I see that.

3 Q And that's -- that's different than -- than the opinion
4 you come to in your valuation, isn't that right?

5 A Yes.

6 Q Now there's other mistakes in the report as well, isn't
7 that right?

8 A I'm familiar with one.

9 Q Okay. Well, now that -- now you testified on direct that
10 the total replacement cost for the subject property including
11 all hard and soft costs is 242,000,000 -- well, you said
12 242,000,000, right?

13 A Yeah, rounded.

14 Q Right. But that's -- that -- but that's your testimony,
15 right?

16 A That's correct.

17 Q And if we go to Page 42 of your valuation report, the top
18 -- the top sentence. And that -- and that's where you -- you
19 state that in your report, right?

20 A That's correct.

21 Q Okay. Now if we -- and that -- and that's based on the
22 cost approach, right?

23 A That is for the cost approach.

24 Q Okay. Now I'm correct, aren't I, that if you use the

25 242,000,000 and then you subtract out -- you add on the land
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 211 of 256

1 price and you subtract out 25%, and then you subtract out
2 another 60%, you don't get to 43,300,000. I'm right about
3 that, aren't I?

4 A No, I think -- I think that's -- that's correct.

5 Q You -- you believe that -- that the numbers work?

6 A Yes, I do.

7 Q Okay. Can you turn to your report on Page 44?

8 A Yes, sir.

9 THE COURT: Excuse me. I need to have something
10 clarified. Do you take the 25% and the 60% off of the
11 combined replacement cost and land value, or just the
12 replacement cost?

13 A Just the cost of the buildings, yes.

14 Q Can you blow up the chart, please? Thank you. Now this
15 is the chart that reflects your summary of the cost approach,
16 correct?

17 A That's correct.

18 Q And here instead of having the total replacement cost as
19 being 242,334,637, instead if -- if you go down to the middle,
20 it says 225,821,073, isn't that right?

21 A That's correct.

22 Q And -- and that's because at some point you -- you
23 changed things and didn't carry it through into the chart,
24 isn't that right?

25 A Well, that occurred because actually one of the sales was

1 hard coded and towards the top. So if you -- if you take, you
2 know, if you do the math and work your way down you'll find
3 that. But you're correct that that conclusion of two
4 twenty-five eight twenty-one is inaccurate.

5 Q Okay. But then you -- and then it's after that that you
6 then, you know -- you know, took off the 25% and then reduced
7 the 60%, and then added back the land and you got to
8 forty-three three hundred, right?

9 A That's correct.

10 Q You know, but -- but that's based on the two twenty-five
11 number, right?

12 A Actually it's not. Somehow this -- there was a hard
13 coding that was inaccurate, but if you take 15% of
14 242,000,000, it is approximately 36,000,000. So it is the
15 correct number, but somehow we -- we -- you know, and I had a
16 long talk with an analyst on this, but we -- understanding why
17 something was hard coded in there which -- which produced an
18 erroneous conclusion in the table.

19 But the math, if you take 15% times 242,000,000, I don't
20 have a calculator, but 10% would be twenty-four and 5% would
21 be twelve. That's approximately 36,000,000. And that would
22 give us the correct answer at the bottom.

23 Q All right. Now was this the error that you said that you
24 were aware of?

25 A That was the one that I was aware of.

1 Q Okay. And as far as you know there are no more?

2 A I mean I've read it five times, so I -- you know, I'd
3 leave it to you.

4 Q Okay, well --

5 A I mean I don't know. If you've got something that's --

6 Q Well, you're aware there's -- there's numerous typos,
7 right?

8 A No.

9 Q Let's move on back to some substantive things. Now the
10 basis for your -- there's really two key inputs to your
11 replacement cost valuation, right? One of them is the -- the
12 replacement cost per square foot?

13 A That's correct.

14 Q And -- and the other one is, you know, your depreciation
15 number, right?

16 A Correct.

17 Q Okay. And you know, and the other -- the two things that
18 really move the needle here in terms of the valuation, right?

19 A That's correct.

20 Q The value -- the value of the land in the -- in the big
21 scheme of things in your mind is relatively de minimis, right?

22 A I mean \$7,000,000 is a lot of money to me.

23 Q Okay. But -- but compared to the two forty-three you
24 start with it's not -- it's not very -- very much, right, from
25 a mathematical perspective, it's -- it's not very significant,

1 right?

2 A Statistically, you're -- you're correct.

3 Q Okay. So now the \$243,000,000 number, you get that, you
4 know -- you know, it's based on what you concluded to be, you
5 know, the amount per square foot for -- for construction,
6 right?

7 A That's correct. I think it works out to roughly \$525.00
8 a square foot.

9 Q Five hundred and twenty-five dollars per square foot for
10 above ground square footage for the property, right?

11 A Correct, correct.

12 Q You used \$400.00 per square foot for all of the above
13 ground property and then you used a different number for the
14 below ground, and if -- and the average is five twenty-four if
15 you exclude out the below ground square footage, isn't that
16 right?

17 A That's correct.

18 Q And that's in the chart that we just talked about that
19 has the -- the sale error in it, right?

20 A Yes.

21 Q Now you looked at three sources for coming up with the
22 \$400.00 per square foot number, right?

23 A That's correct.

24 Q You looked at the -- the Marshall Swift valuation number,
25 right?

1 A Yes, sir.

2 Q And you looked at the -- the National Park Service
3 number, right?

4 A Correct.

5 Q And then you looked at some comps, isn't that right?

6 A And we had some sales, correct. I already said so.

7 Q Well, they're not they're not sales, right, because
8 you're looking at -- at the cost per square foot for
9 construction. So they're not really -- they're just
10 comparables, right? Comparable --

11 A Sorry to interrupt. Yeah, we had a couple properties
12 that are part of the comparable sales that -- where we were
13 able to determine or get a range of construction costs for
14 them.

15 Q And you ultimately, you know, used a five -- five, you
16 know, comps for construction costs, isn't that right?

17 A That's correct.

18 Q And on Page 41 of your report you listed the five comps
19 that you used, isn't that right?

20 A That's correct.

21 Q Can you blow up the chart, please? And these were the
22 five you used?

23 A Those are five, yes.

24 Q Now let me ask you about a few of them. So the Miami Art
25 Museum. Are you familiar with that property?

1 A I am not.

2 Q Do you know its formal name?

3 A No, I do not.

4 Q If I told you it was the Perez Miami Art Museum, would
5 this -- would -- would --

6 A Oh, that's familiar, yes.

7 Q Is that familiar?

8 A Yeah, that sounds -- yes.

9 Q And that -- and that's what it is, right?

10 A He's putting his collection there.

11 Q Okay. And that's going to be -- it's in a -- in a
12 property that's going to overlook Biscayne Bay, is that right?

13 A Yes, sir.

14 Q And it's got celebrity, or I don't know, celebrity is
15 probably not the right word, a world renown architect who
16 designed the building?

17 A That's correct.

18 Q And it's going to house a very important art collection,
19 isn't that right?

20 A Yes, sir.

21 Q Okay. Now so that in -- in some respects has the type of
22 similar characteristics to building a building to house an art
23 museum -- an important art museum in Detroit, if you had to
24 find replacement costs for -- for the DIA, right?

25 A It's a data point that we considered, yes, sir.

1 Q Okay. Well, but I'm just saying, it -- it -- it -- it's
2 -- it has some similarities to building a -- if you were to
3 build a new house, you know, to house the DIA, it has some
4 similar characteristics. You'd want to have an iconic
5 building, you'd want to have a -- a historic or an important
6 architecture, and you'd want to have something that is
7 designed to show a world class art collection, right?

8 A Yes, sir.

9 Q Okay. Now and -- and there they're spending \$1,000 --
10 over \$1,000 per square foot to build that museum, right?

11 A Yes, sir.

12 Q And that's a lot more than the 400 that you estimated you
13 know, for replacement costs for this property, right?

14 A I think our cost was in the 525, but yes, it is more.

15 Q Sir, now -- now if -- you know, the cost -- the price you
16 used is \$400.00 per square foot for above ground space, isn't
17 that right?

18 A That is not correct.

19 Q That's not correct? Can we go back to the chart on --
20 okay. Can you blow that up, please? Thank you. Now -- now
21 you told me that this is how you calculated your replacement
22 cost, right? It's got a sale error in it, but said it all
23 fits and this is how you did it, right?

24 A Correct.

25 Q Correct. Now the first line says base cost above ground
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 218 of 256

1 area, right?

2 A Right.

3 Q Four hundred and sixty-two thousand one hundred and
4 seventy-four square feet. That's how many square feet that
5 you believe they have above ground, right?

6 A That's correct.

7 Q And then you multiplied by 400 -- \$400.00 per square
8 foot, right?

9 A To arrive at a base cost.

10 Q For -- right. Base cost for the above ground area,
11 right?

12 A The base cost.

13 Q Now but then you add to it the next line which is 154,000
14 square feet below ground, right?

15 A Correct.

16 Q And then you multiply that by \$97.84, right?

17 A Correct.

18 Q So you know -- you know, you're -- you're the appraiser.

19 I'm not the math guy, but it seems to me if you start with
20 \$497.00 per square feet and you -- you kind of averaged the
21 two, you know, you can't get to 500, right? The way you get
22 to 500 is you take out the 97 -- the 154 times 97 and you just
23 take the 462, divided by the -- the 243 because there's a --
24 there's a -- there's a math error here, right?

25 A Well, what you don't understand is that we can talk about

1 prices per square foot. We don't consider the basement space.
2 We -- we consider the cost of the basement space in the
3 aggregate total, but when we discuss prices on a price per
4 square foot, we just use the above grade area.

5 Because that's the usable space that is going to be used
6 for the purpose of the building. Nobody is going down to the
7 basement to tour the boilers. And they're going to not go
8 down there and look at the -- at the storage rooms, they're
9 not going to have access to that. We just considered the
10 above grade space.

11 So the aggregate price which is the 242,000,000, you
12 know, yes, the total base cost when you started out in the
13 analysis, we used \$400.00 which is within the park district's
14 number, the Department of Interior, you know, Department of
15 Parks, and also supported by a Marshall valuation cost
16 service.

17 We need to add to that to account for the space that they
18 need to put the boilers and all the other -- other type of
19 components, correct? So then we need to account for that in
20 the total cost.

21 So the total cost then is the \$242,000,000 figure then we
22 divide that by the above grade space to conclude the total
23 cost.

24 Q All right. So sir, how many above ground square feet are
25 there in the Perez Miami Art Museum?

1 A You know, I was trying to think about that because I knew
2 you were going to ask me. I don't have that figure offhand.
3 I think it's -- I want to say it's like somewhere between
4 60,000 and 100,000 square feet. I don't think it's that large
5 of a facility.

6 Q But -- but you don't know?

7 A I don't recall, sorry.

8 Q Okay. Now, but is it -- is it your testimony that the
9 1,092 is only for the above ground space done the same way
10 consistently with your --

11 A Yes, sir.

12 Q And how -- how do you know that, sir?

13 A I mean that's how we understand the -- how the
14 information was presented to us.

15 Q Well, did -- did you put that table together?

16 A We had the -- yeah, I worked on this table.

17 Q Okay. But you personally did it?

18 A Yes.

19 Q Okay. And so can you -- can you tell me how many above
20 ground and how many below ground square feet there are?

21 A That I don't know off the top of my head. I don't
22 recall. I don't have that information with me.

23 Q Okay.

24 A It's in my email files.

25 Q Now the -- now the -- the Pope John Paul Cultural Center.
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 221 of 256

1 That's in Washington, D.C.?

2 A Yes, sir.

3 Q That's not an art museum, is it?

4 A That's an institutional use.

5 Q Sir, is it an art museum?

6 A It is not, I'm sorry.

7 Q Now the Pennsylvania Academy of Music, that's not an art
8 museum either, right?

9 A No, sir.

10 Q And that's not even a museum, is it?

11 A It's a music school.

12 Q It's a music school. Was a music school, right?

13 A Right.

14 Q Filed bankruptcy, went out of business, right?

15 A It did.

16 Q Okay. But that -- but that was a school?

17 A It was a school.

18 Q Okay. And now the American Folk Art Museum, that's --
19 that's a museum, right?

20 A Correct.

21 Q But that's a small museum. It's nothing on -- on the
22 scale of the DIA, right?

23 A No, sir.

24 Q Okay. And the Museum of American Arts and Crafts that's

25 proposed in St. Petersburg which isn't completely built yet.

1 that's an art museum as well, right?

2 A Yes, sir.

3 Q And but that's a small museum, correct?

4 A That is on the smaller side.

5 Q Okay. Now at the time you put this chart together, isn't
6 it true that you had other information about the cost of -- of
7 constructing fine art museums that -- that you didn't include?

8 A Well, we interviewed some architects and I -- I spoke
9 with a couple high end architects to get their sense of their
10 experience and, you know, if they had ever done any work on --
11 and also just discussed the DIA with them and see if they were
12 familiar with it.

13 Q Okay. But at the time that you put this art together,
14 you were -- you -- you were aware, weren't you, that the Eli
15 Broad Museum in Los Angeles cost \$1,167 per square foot.
16 You're aware of that, right?

17 A Somebody had given me that figure. I'd taken some notes
18 on that on a couple phone calls that I made with a couple
19 architects. And so they were -- they were figures and I asked
20 them if they had any corroboration for that and they said no.

21 Q Well, let me ask --

22 A That's what they -- that's what they had heard.

23 Q Okay. Now -- now when you say the they, right? The they
24 who gave you those figures that's your staff, right?

25 A No. I made those phone calls. So I made the phone

1 calls.

2 Q Okay.

3 A Spoke with the architect. And I explained what my
4 assignment was and what I was trying to do and he -- and he
5 had mentioned that he had heard some figures, you know, and a
6 lot of it has to do with -- I think, you know, with hiring a
7 very very expensive architect.

8 Q Okay. But -- but you -- but you were aware of those
9 numbers and -- and ordinarily when you do your report and it's
10 throughout your report you talk about how, you know, you
11 called other real estate, you know, brokers, or appraisers,
12 and architects and -- and putting together a report like this
13 you regularly reach out and -- and call people who have
14 information to help you with your assignment, right?

15 A Yes, sir.

16 Q And as a -- as a real estate appraiser you regularly rely
17 upon this information, isn't that right?

18 A Yes, sir.

19 Q And the information that's in this table is information
20 as well that you got out of news medias or from other, you
21 know, people have told you. Because it's not that you can
22 just go on to the web sites for these places and -- and get
23 this information, isn't that right?

24 A Correct.

25 Q Okay. So in addition to the -- the information about the
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 224 of 256

1 cost of the Eli Broad Museum, are you -- you're familiar with
2 the Eli Broad Museum, right?

3 A I'm not.

4 Q Okay. But -- so you're unaware that it's a -- you know,
5 it's a very large art museum in Los Angeles that is going to
6 house a very important art collection. Are you aware of that?

7 A I'm not, sir.

8 Q Okay. And -- and you said that the -- one of the reasons
9 that you thought that was -- was a -- was a you know, \$1,000,
10 was this was a high end architect, right?

11 A I mean that was my understanding of my conversation
12 with --

13 Q Okay. And at the time that you put together your report,
14 you were aware that the Kimbell Art Museum expansion in Fort
15 Worth, Texas was costing \$1,135 per square foot. You're aware
16 of that, right?

17 A I was aware of that, yes.

18 Q Okay. And -- and we talked about the Chicago Art
19 Institute earlier. And you're aware that the Chicago Art
20 Institute is doing an expansion, right?

21 A That's correct.

22 Q And you were aware that the -- the Chicago Art Institute
23 addition is costing between 1,200 and \$1,500 per square foot,
24 isn't that right?

25 A That was a figure I was quoted, yes.

1 Q Do you have any reason to doubt it?

2 A I have no reason to believe it. I mean I was just given
3 the information over the phone by an architect who thought
4 those were the figures that he would -- that he had heard. I
5 thought they were -- they were really high and staggering.

6 Q Okay. Well, let me -- let me ask you a question. Did
7 you do anything to follow up regarding the -- the price of the
8 Broad Museum, the Kimball Museum, or the Chicago Art Institute
9 Museum costing after you spoke to these sources?

10 A No, I didn't. And the reason I didn't do it is because
11 they're additions. And so additions are -- are vastly more
12 expensive than ground up new. And if you're going to build
13 something new, you're not going to have to tear off an
14 exterior elevation, fit systems, you know, build it and while
15 the museum is in operation. There's a lot of things that --
16 that add to the cost that -- that really make that not a very
17 applicable data point.

18 Q Okay. But you're aware that the -- the Whitney Museum in
19 New York is building a new museum, right? That's -- that's a
20 brand new museum. You're aware of that, right?

21 A I'm not aware of that. Or I don't recall.

22 Q Okay. So you don't -- you don't recall one of these
23 architects or one of your colleagues telling you that the
24 Whitney was -- was -- was -- was building a new building?

25 A I do not.

1 Q Okay. So -- so you don't recall that that's going to
2 cost about \$1,900 per square foot?

3 A I mean it could be in my file notes. I don't have -- I
4 don't recall, no, I do not.

5 Q And is the Smithsonian Building a new museum in
6 Washington, a new art museum? History and cultural museum.

7 A Okay. I -- I do not -- I'm not aware of it.

8 Q The National Museum of African History and Culture, are
9 you aware of that?

10 A I do recall I think a conversation about that, yes.

11 Q And do you -- do you recall how much that's costing to
12 build?

13 A I don't -- I'd have to see my file notes, I don't recall.

14 Q If I told you that it was \$1,429 per square foot, would
15 that refresh your recollection?

16 A Now one of the issues with the -- it would -- it would --
17 it would refresh -- it wouldn't refresh my memory, I don't
18 recall the figures. From -- I do not recall that figure,
19 sorry.

20 Q Okay. Now at the time you put together this chart, you
21 were aware that -- that there's something called *Museum*
22 *Magazine* that's published by the American Association of
23 Museums, right?

24 A Yes.

25 Q And you are aware that they had done a study on the

1 construction costs of museums, isn't that right?

2 A I believe there was like a blog or something on their
3 site that where somebody had posted -- posted some
4 information.

5 Q And you're aware that -- that they looked at 137 museum
6 projects of all types, right?

7 A I don't recall that part of the -- of the discussion, but
8 is it in my file notes here?

9 Q Yeah. But -- but -- but it's not supposed to be a memory
10 test, but I just want to know what -- I just want to know what
11 you remember first. We can go to the notes in a minute.

12 A I don't -- I don't recall that, no.

13 Q Okay. But let me -- let me just ask you a couple
14 questions. But you -- but you knew that they had done a
15 study, right?

16 A You know, we were looking for --

17 Q Well, I'm just asking you a simple question. You were
18 aware that *Museum Magazine* had done a study on the
19 construction costs of museums, right? Yes or no?

20 A I -- there was -- there was some information regarding
21 the cost of museums that I found on their web site that I
22 recall.

23 Q All right. I'm just -- I'm asking, you know, and we can
24 go look at your notes if -- if you need it to refresh your

25 recollection.

1 A Yeah.

2 Q I'm just asking you a question. At the time you did your
3 report, isn't it true that you were aware or had reason to
4 believe, if you like that better, we can say had reason to
5 believe that *Museum Magazine* had done a study of the
6 construction costs of museums?

7 A I don't recall.

8 Q Can you pull up Exhibit 5192 and POA -- POA 717941? Now,
9 sir, this was a document that was produced by the city in --
10 in discovery. I believe this is part of your reliance
11 materials. Have you seen this before?

12 A Yes, I have.

13 Q Okay. And this is an -- an article on some community
14 board referring to a -- a *Museum Magazine* article, is that
15 right?

16 A Yes, sir.

17 Q And does this refresh your recollection as to whether or
18 not you had reason to believe that *Museum Magazine* had done a
19 -- a study as to the cost, the construction cost for museums?

20 A I do, but I think that there's other information in here
21 that said that.

22 Q Okay. I'm just asking -- all I'm asking you at this
23 point is, does this -- does this refresh your recollection
24 that you were aware that they had done a study? That's all

25 I'm asking you at this point.

1 A Yes.

2 Q Now, one thing I noticed about what was produced was
3 there wasn't a copy of the -- of the *Museum Magazine* study.
4 Did -- did you -- and the reason for that is because you made
5 no effort to get it, isn't that right?

6 A I don't understand your question.

7 Q I'll make it simpler. After you read this article and
8 found -- and at the time you read this article, you were
9 putting together your report, right?

10 A Well, I -- I pulled this off the web and --

11 THE COURT: Please just answer the question, sir.

12 A Could you repeat the question?

13 Q Sure. So you saw this article on the web, right?

14 A Correct.

15 Q Okay. And at the time you saw this on web, you were
16 trying to figure out what the replacement cost would be for
17 the DIA, isn't that right?

18 A Yes, that's correct.

19 Q So you were very interested in what the replacement cost
20 or what the construction costs were for museums, right?

21 A Yes, sir.

22 Q And you, and after having seen this, you became aware,
23 didn't you, that *Museum Magazine* may have done a study on that
24 very issue, isn't that right?

25 A That's correct.

1 Q But you never got a copy of the article, isn't that
2 right?

3 A I did not.

4 Q Even though you were trying to -- to do the best you
5 could for the Court, and figure out what the appropriate
6 replacement cost was, you never went forward and tried to find
7 this study, isn't that right?

8 A I think that -- that's right.

9 Q That's right is good enough, thank you. Now did you --
10 you took into account when you -- you did your analysis, what
11 you learned from this -- from this blog, right?

12 A Can you -- I don't understand your question.

13 Q When you wrote your report --

14 A Yes.

15 Q You considered the information that was contained in this
16 article or, you know, that you found on the web, right?

17 A Yes, sir.

18 Q Okay. And now at least with respect to what the reporter
19 said, now you never got the article, the actual study, so we
20 don't know what the study said, but with respect to, you know
21 -- you know -- can you highlight the first paragraph?

22 Now with respect to what -- what this reporter does, you
23 know, quoting from the -- you know, from the magazine, it says
24 between the -- the American -- *Museum Magazine* surveyed 137

25 museum building projects and that the total investment is in

1 excess of 5.2 billion dollars and that the -- the average cost
2 was seven hundred and seventy-one sixty-nine, right?

3 A Yes, that's what the article says.

4 Q Okay. And that would have been for museums of all kind,
5 high end museums, low end museums, art museums, historical
6 museums, sports museums, all kinds of museums, right?

7 A I'm not familiar with the study, so obviously it's an
8 aggregated number, yes.

9 Q Well -- well, you know, I mean given that you were filing
10 this report, don't you think that it was incumbent upon you to
11 get the study and analyze it?

12 A There was other commentary in the blog that made -- that
13 discredited the -- the information that made it sound less
14 reliable.

15 Q And -- but -- but in order to determine whether it was
16 reliable or not, you should have -- you would have to get the
17 study, right?

18 A We chose not to get the study.

19 Q Okay. But the city was paying you to do this work,
20 right?

21 A Yes.

22 Q And you had professional responsibility to do a good job,
23 right?

24 MR. IRWIN: Your Honor, this ground I think has been
25 covered. This has been asked and answered.

1 THE COURT: Please move on.

2 MR. BRILLIANT: Yes, Your Honor.

3 Q Now in addition to -- now if you would have -- if you
4 would have used a higher square -- price per square foot, that
5 would have increased you know, your valuation, isn't that
6 right?

7 A It would increase the valuation for the cost approach,
8 correct.

9 Q Okay. And if you would have, you know, increased it to
10 \$800.00 per square foot for the above ground area, that that
11 would have almost doubled the -- the appraisal, right for the
12 above ground area?

13 A I mean simple math, sure.

14 Q Okay. And that was something less than the \$1,000 per
15 square foot that fine art museums are costing, right?

16 A Eight hundred is less than a thousand, yes, sir.

17 Q Okay. Now after you came to your conclusion you then
18 deducted, you know, for what you call obsolescence, right?

19 A Yes, sir.

20 Q Okay. And now the obsolescence that you're referring to
21 is the -- you know, the discount that you believe would be on
22 the property if it wasn't going to be used as an art museum,
23 right?

24 A And also market conditions, external obsolescence as

25 well.

1 Q Well, let's -- let's break it down. But the -- the --
2 the -- the reason you did it, right, is because it's a single
3 use property and -- and your view is there's not a lot of
4 demand for this among institutional buyers who were to use it
5 for something other than an art museum, right?

6 A That's correct.

7 Q But if it was going to continue to be used as an art
8 museum, you wouldn't have that issue, right?

9 A That's correct.

10 Q Okay. And -- and you -- and again, you're aware that
11 this property if the plan goes forward will continue to be
12 used as an art museum, right?

13 A That's my understanding, yes.

14 Q And -- and the reason that you made the assumption that
15 it -- and -- and you -- and took a deduction for the
16 obsolescence, was because you were told to -- to assume that
17 it would not continue to be an art museum, right?

18 MR. IRWIN: Objection, told by whom? There's been
19 no testimony in that regard.

20 MR. BRILLIANT: I believe he -- he said he was told
21 when he did the report not to -- to consider that it would be
22 an institutional use other than as a -- continuing as an art
23 museum.

24 THE COURT: Why don't you clarify that with him,

25 first.

1 MR. BRILLIANT: Okay, yes.

2 Q Sir, when you did your report, you know, you were told in
3 making your assumptions that the property would -- would not
4 continue as an art museum, right? And that you should value
5 it as if it were to be purchased by someone other than holding
6 -- using it as an art museum, right?

7 A The assignment commission that we appraised the property
8 under was that it was vacant. And that it was available for
9 the next potential user to do with -- to do with it whatever,
10 you know, their purpose was. So, you know, with no regard to
11 any of the art, anything art like of property thereof of an
12 art, you know, of the -- with the DIA.

13 Q Okay. But when we talked about what you meant by
14 institutional user earlier you said other than as an art
15 museum, right?

16 THE COURT: No. He said exactly the opposite.

17 MR. BRILLIANT: Oh, okay. Well, then I apologize.

18 THE COURT: When I asked him.

19 MR. BRILLIANT: Okay.

20 Q All right. So and then with respect to the obsolescence,
21 the obsolescence factor you got by looking at two comparables?

22 A Yes, sir.

23 Q And those two comparables, are the -- the cathedral in
24 Washington?

25 A Yes, sir.

1 Q And the music school in Lancaster, Pennsylvania?

2 A That's correct.

3 Q And the -- the -- the music school in -- in Lancaster,
4 Pennsylvania, I think we already talked about that. They
5 filed bankruptcy and went out of business, right?

6 A Correct.

7 Q And so the -- the property was a music school and then it
8 was sold to a university, is that right?

9 A That's correct.

10 Q Okay. And with respect to the -- the cathedral, in
11 Washington, you're aware that -- that that was a property that
12 was sort of like a -- you know, the equivalent of a
13 Presidential library for a Pope, right?

14 A Correct.

15 Q And when the built that they had an expectation that a
16 lot of people would -- would come to the -- to the -- to the
17 museum?

18 A Yes, sir.

19 Q And that didn't happen, right?

20 A That's correct.

21 Q And so they decided not to continue it in business and
22 they sold it, isn't that right?

23 A They did sell it, yes.

24 Q They sold it to the Knights of Columbus?

25 A Correct.

1 Q Okay. And now it's an inter faith center?

2 A I think it's also still honoring Pope -- the Pope.

3 Q Right. It's honoring the -- the Pope, but it's -- it's
4 -- it's a -- it's now an inter faith center and it honors the
5 Pope?

6 A Yes, sir.

7 Q And neither of those are art museums, right?

8 A No, sir.

9 Q And neither of them have the characteristics of the --
10 the property we're discussing here, right?

11 A Other than I mean they have characteristics that they're
12 institutional properties, institutional special use
13 properties.

14 Q Okay. But -- but they're not similar in size or similar,
15 is that right?

16 A No, they're smaller.

17 Q And they're not similar in use?

18 A They're not art museums, right.

19 Q And they're not in Detroit?

20 A Correct.

21 Q Now what you -- what you use there right, for figuring
22 out the level of obsolescence, is -- you found what the
23 construction cost was, right?

24 A Yes, sir.

25 Q And then you depreciated it. And then you found out the
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 237 of 256

1 sales price, right?

2 A We -- we started with the sale price and we deducted the
3 land cost to get to the building value new. And from that we
4 estimated the -- the total depreciation.

5 Q And -- and basically you -- you figured out the
6 obsolescence amount which was basically the loss on the
7 building, right?

8 A Yes, sir.

9 Q Now that's really using a sales comp, right? So it's not
10 really using a -- a replacement cost comp. You're really just
11 looking at a -- at a sales comp and applying it in the
12 replacement cost method, isn't that right?

13 A Well, it is one of the sales comps and it's a
14 institutional use and there just weren't that many. So we
15 just, you know, we used it because we felt that it was
16 reliable.

17 Q And so you -- you -- okay. And so that -- so that's the
18 reason you used it because you thought it was reliable as a
19 comp for the DIA's property in Detroit?

20 A We felt that it was -- it was an indication of what
21 obsolescence would be in the marketplace for a special use
22 type asset of institutional character.

23 Q Now I'm right, aren't I, that the Pope John Paul, II
24 Cultural Center was -- was built just before what's referred
25 to as the great recession, right?

1 A Yes, sir.

2 Q And then it was sold what in 2010, is that right? Or
3 2011?

4 A 2011, yes.

5 Q Right. So it was sold after the -- the great recession,
6 right?

7 A Yeah. It ended in what, 2009, I believe, yes sir.

8 Q Right. So, you know, isn't it likely that a lot of the
9 decrease in the value of the property was just caused by -- by
10 market conditions that had nothing to do with the obsolescence
11 of the property?

12 A I don't -- I tend to disagree with that. I think market
13 conditions in -- in that market were fairly -- fairly stable
14 at that point. I don't -- I would disagree with that.

15 Q So -- so it's your -- your testimony that after the great
16 recession real estate prices in Washington, D.C., you know,
17 didn't go down, is that -- that's your testimony?

18 A I believe that -- that -- no, you're -- I think -- let me
19 correct this. You're right. I think they were -- they were
20 -- there was probably some influence of market conditions.

21 Q Okay. And the -- right. And with the school in -- in
22 Lancaster, Pennsylvania that we talked about construction was
23 completed in 2008, right?

24 A Correct.

25 Q And they had financial difficulties in 2010?

1 A Yes, sir.

2 Q And they went out of business around then and sold it in
3 -- around that period, right?

4 A Correct.

5 Q Okay. And isn't it true that a lot of the diminution in
6 value, you know -- you know, there you know, was caused, you
7 know, by the great recession and the -- the reset of real
8 estate prices?

9 A That could have had some influence, yes.

10 Q And you -- you based your entire obsolescence rate just
11 upon these two comps, isn't that right?

12 A I mean also we -- we -- no, I would say no to that.

13 Q You would say no to that?

14 A Yes, sir.

15 Q Can you turn to Page 43 of your report? Now your
16 discussion of obsolescence starts on the -- on the previous --
17 on the previous page, right?

18 A Uh-huh, yes, yes.

19 Q On Page 42?

20 A Yes.

21 Q And you describe you know, what you think obsolescence is
22 on -- on Page 42, right?

23 A Correct.

24 Q Then you look at your two market comps?

25 A Yup.

1 Q Then you describe the two comps, right?

2 A Yes, sir.

3 Q And you come up with a -- you know, you describe the two
4 and then you reach a conclusion. So, you know, based upon the
5 two comps. So where -- where -- where is it that you discuss
6 any other -- any other factors that -- other than these two
7 comps?

8 A Well, on Page 42, the second paragraph -- or I'm sorry,
9 the third paragraph under the obsolescence header, I can read
10 a paragraph to clarify if you'd like me to.

11 Q Okay. That would be fine.

12 A So the asset is situated in the midtown Detroit market
13 area that is exhibiting limited demand for larger sized
14 facilities. We researched this large -- the sale of large
15 office use properties in the downtown and midtown area and
16 note significantly depressed sale prices.

17 Q So -- so you're saying that you determined the
18 obsolescence, you know, for a -- a -- a building that's used
19 for art, you know, based upon, you know the -- you know, the
20 -- the investment real estate market in -- in Detroit in part?

21 A I think it would be considered a measure of -- of market
22 conditions. And market conditions in general will affect, you
23 know, the part of external obsolescence.

24 Q Okay. So can you -- can you turn to, you know, your

25 conclusion on obsolescence which is the bottom of 43? Okay.

1 So it says, physical depreciation is estimated at 25%, a rate
2 higher than 5 to 16.67% rates of the two properties analyzed
3 primarily due to the higher weighted average of 66 years. The
4 two properties analyzed were newer and has no known curable
5 physical depreciation (deferred maintenance). The
6 obsolescence rate of 60% is within the 58 to 66% range of the
7 two properties analyzed and reasonable given the similar
8 property type and subject's location. The physical
9 depreciation and obsolescence total 85%. That's your
10 conclusion, right?

11 A Yes, sir.

12 Q And that doesn't mention at all anything about the -- the
13 market conditions in Detroit, does it?

14 A Well, we talked about the property's location. We
15 mentioned the subject's location. It's located in down --
16 it's located in Detroit.

17 THE COURT: Okay. But the question was in regard to
18 this paragraph.

19 A So but it is a paragraph --

20 THE COURT: This paragraph does not mention analysis
21 of Detroit, does it?

22 A It does not.

23 Q Now I want to ask you a question about -- about actually
24 your -- your ultimate conclusion here. Now your conclusion is
25 based solely on the cost method, right?

1 A Well, we had two conclusions of value.

2 THE COURT: Excuse me one second. You need to
3 clarify what you mean by the conclusion here.

4 Q Okay. Your conclusion of value here, you know, is -- is
5 based solely on the cost method, isn't that right?

6 A Yes.

7 Q And your conclusion of value we -- we talked about this
8 earlier, is 43.3 million, right?

9 A Yes, sir.

10 Q And all -- all you used the -- you know, all you used,
11 you know, the comparable sales methodology for was to test for
12 reasonableness, right?

13 A No, sir.

14 Q That's not right?

15 A We used the comparable sales for test for -- as a test of
16 reasonableness, but we also used the sales as data within the
17 cost approach to determine obsolescence and we used it also to
18 understand some of the differences between investor sale
19 prices and institutional purchase prices. And also to look at
20 the significant diminution of value special assets undergo
21 because of their -- because of their character.

22 Q All right. Can you turn to Page 44 of your report in the
23 conclusion, please? Under the table of conclusion, please.

24 So -- now this is your conclusion, right? Based on the

25 foregoing, we have estimated the as is market value of the
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 243 of 256

1 subject property via the cost approach as of the date of
2 valuation is 43,300,000 as rounded.

3 As a test of reasonableness we considered the depreciated
4 cost of the improvements estimate of 43,300,000 or 93.69 per
5 square foot to be within the range of a shell value for a high
6 quality institutional facility or office property, assuming
7 the property is purchased by a user that will repurpose the --
8 the building for institutional or office use. That's --
9 that's your conclusion, right?

10 A Yes, sir.

11 Q The cost approach. And then if we turn to Page 45, at
12 the top, the heading on the top says sales comparison approach
13 test of reasonableness. Did I read that right?

14 A That's correct.

15 Q It doesn't say sales comparison approach, second
16 methodology for reaching value, right?

17 A That's correct.

18 Q Okay. I just want to ask you a couple questions about
19 what you didn't do. Now --

20 THE COURT: Excuse me, sir, how much longer will you
21 be?

22 MR. BRILLIANT: Two minutes.

23 THE COURT: Okay.

24 Q So you didn't -- you didn't value -- I think you

25 testified earlier, you only valued the shell of the building
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 244 of 256

1 and the land, correct?

2 A Yes, sir. We just appraised the real estate.

3 Q Well, the real estate and the building, right? The --

4 A The building is real estate, yes, sir.

5 Q Okay. But -- but you didn't appraise all of the other
6 things that are in there that are necessary in order to run a
7 art museum, correct?

8 A Correct.

9 MR. BRILLIANT: Okay. Thank you. I have no further
10 questions.

11 THE COURT: All right. Mr. Brilliant, I have a
12 question for you.

13 MR. BRILLIANT: Sure.

14 THE COURT: What will your evidence show the value
15 of this real estate is?

16 MR. BRILLIANT: I don't believe we're going to have
17 any evidence on the issue, Your Honor.

18 THE COURT: What is your position on what the real
19 estate value is?

20 MR. BRILLIANT: I think, Your Honor, I think it's
21 243,000,000 less an appropriate, you know -- you know,
22 depreciation of 25 -- you know, 25%.

23 THE COURT: What's the bottom line number?

24 MR. BRILLIANT: Now you're asking a lawyer to do

25 math, Your Honor.

1 THE COURT: I'm just asking you what your position
2 is on the value of the property.

3 MR. BRILLIANT: Yeah, yeah, yeah. No, if you'll
4 give me just one second, Your Honor.

5 THE COURT: Sure.

6 MR. BRILLIANT: About 200,000,000, Your Honor.

7 THE COURT: Okay. Thank you. All right. We're
8 going to take our afternoon recess now and let's reconvene at
9 3:35, please.

10 (WITNESS JOHN SATTER WAS TEMPORARILY EXCUSED AT 3:20
11 P.M.)

12 THE CLERK: All rise. Court is in recess.

13 (Court in Recess at 3:20 p.m.; Resume at 3:35 p.m.)

14 THE CLERK: All rise. Court is back in session.
15 You may be seated.

16 THE COURT: Let me just ask for the record any other
17 cross examination of the witness? All right. You may proceed
18 with redirect.

19 MR. IRWIN: I had asked, Your Honor. I was not so
20 presumptuous just for the record.

21 REDIRECT EXAMINATION

22 BY MR. IRWIN:

23 Q Mr. Satter, you were asked some questions on cross
24 examination about differences between the cost method approach
25 and the sales comparison approach. Do you recall that?

1 A Yes, I do.

2 Q Did you use the sales comparison approach in your
3 analysis for more than one purpose?

4 A We did.

5 Q What were those purposes?

6 A So we -- we -- we did the sales comparison approach for
7 two -- to -- to conclude values for two potential buyers. For
8 an institutional buyer who would use the property for say like
9 a Wayne State institutional type buyer. And also for as an
10 investor purchase.

11 Q Were there different data sets that you considered in
12 connection with each of those purposes?

13 A Yes.

14 Q And what were those?

15 A So we had 11 sales of museums, cultural centers type
16 properties that we considered for the valuation as a
17 institutional use. And we had a second set of for sales of
18 properties that were purchased by universities for use as, you
19 know, for -- for their campus purpose. And the third set were
20 the Detroit downtown office sales.

21 Q Was there a data set that was more appropriate in your
22 judgment for use with the investor scenario?

23 A With the investor scenario the -- the office properties
24 in downtown Detroit were the more appropriate.

25 Q And why was that?

1 A Because those properties are being purchased for -- as
2 investments. They're -- they're cash flowing type assets and
3 they're on the tax rolls.

4 Q And what criteria did you use to select those?

5 A So we looked for large assets similar in size to the DIA.
6 And we want -- and -- and were located in the Detroit market.

7 Q And -- and why were you comfortable that that was an
8 appropriate data set for use in connection with a sales
9 comparison approach?

10 A Well, they would be the best indication of value for the
11 subject property assuming that it's -- it would be purchased
12 by an investor. It would -- the DIA building would -- would
13 be vacant at the time of purchase and would require
14 retrofitting purposing for use and also there are sales that
15 are in Detroit.

16 Q Can you -- can you elaborate on that? You -- in Detroit,
17 what was important to you about identifying properties and
18 comparables in Detroit as opposed to somewhere else?

19 A So the -- if you're using sales in Detroit, you know,
20 they're basically subject to the same market conditions,
21 outside influences, that the -- that the DIA would be subject
22 to.

23 So if we looked at the sale prices of those assets and
24 ranging 20.00 to \$40.00 -- or 20.00 to \$50.00 a square foot,

25 for the -- for the gross building area and you're considering
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 248 of 256

1 the cost of a new office building of 200 plus a square foot,
2 it's a significantly depressed amount. So when you're looking
3 at the replacement costs of some of these assets -- I'm sorry,
4 the -- the acquisition cost of some of these assets almost
5 literally just for land value given the -- the sale price. So
6 the buildings are really kind of being thrown in at -- at some
7 point.

8 Q Is -- is location and region important to you in
9 connection with the sales comparison approach on all of your
10 projects?

11 A Absolutely. It's just one characteristic that you can
12 remove from your matrix when you're trying to compare
13 properties.

14 Q All right. Let's -- let's -- I want to ask you a few
15 questions about information that you considered in connection
16 with the cost approach. Do you recall that?

17 A Yes.

18 Q Okay. Did you in connection with your investigation try
19 to assemble information from a wide variety of sources?

20 A Yes.

21 Q Okay. What kinds of people were you talking to as you
22 were collecting information?

23 A Well, we were, you know, talking first amongst our team,
24 and -- and we were then looking at -- or talking to architects

25 and -- I mean really referring to our published data.

1 Q Did you -- you had information to -- to -- or you had
2 occasion to talk to people about projects in other regions or
3 cities?

4 A We -- well, some of the comparable sales that we
5 confirmed were -- were fairly new and so we had that
6 information. You know, on -- on an ongoing, you know, daily
7 practice -- practical basis, you know, we're dealing with
8 construction costs of new properties. And so we have, you
9 know, references there. Those would be the sources.

10 Q Do you recall Mr. Brilliant asked you some questions
11 about hearing about or learning about museum construction
12 costs in other cities or locations. Do you recall that?

13 A I do.

14 Q Why did you not use, or consider, or rely upon that
15 information in connection with your analysis?

16 A In -- in those cases, you know, we had no -- we had
17 limited substantiation for those costs. A lot of those costs
18 we weren't really sure what were in those figures. It could
19 include the land, it could include a lot of the built ins
20 which would be portions that -- that house the art.

21 You know, so it was like they were -- they were lump sum
22 figures which were -- were -- were -- which we considered, but
23 we felt were less reliable.

24 Q What were the criteria that you used to determine

25 reliability in connection with cost or construction data that
13-53846-tjt Doc 7634 Filed 09/22/14 Entered 09/22/14 18:23:17 Page 250 of 256

1 you would use?

2 A Well, we had used the public cost -- you know, we used a
3 public cost source on a daily basis in our practice. And the
4 Marshall valuation service number seemed low to me based on,
5 you know, my experience and going through the museum. And so
6 that's when we reached out to other -- to look for other
7 sources that would be the Department of Interior, you know,
8 the source we thought was a reliable figure aggregated by the
9 -- by the government.

10 You know, buildings that were built for the governmental
11 purposes tend to have similar cost indexes if you will. And
12 we felt those were more reliable.

13 Q And have you used that publicly available, or that --
14 that reported data in your other assignments?

15 A Yeah. We used the cost -- the Marshall valuation cost
16 service on a daily basis for any of our assignments when we're
17 doing the cost approach.

18 Q Okay. If you could turn briefly to -- would you pull up
19 City Exhibit 466, please? Do you have that in front of you,
20 sir?

21 A Oh, I'm sorry, which one?

22 Q It's okay. It's 466. It's your report.

23 A 466. I don't understand.

24 Q It's on the screen, yeah.

25 A Yeah.

1 Q Let's turn to Page 2 if we could, second page of the
2 report.

3 A Yeah.

4 Q You were asked about this -- the summary of your opinions
5 which is about a third of the way down the page. Do you see
6 that?

7 A Yes.

8 Q And it states that the market value of the property in
9 question falls somewhere between 18,500,000 and \$43,000,000
10 depending on the circumstances of the sale. Do you see that?

11 A Yes, I do.

12 Q And what did you mean by that?

13 A That the value of the property we estimated would --
14 could be somewhere in that range depending on who the buyer
15 is.

16 Q And is that something that you also provided in the core
17 report that you attached to your expert report?

18 A Yes, we did.

19 Q Okay. Could I refer you, the same 466, it's the third
20 page in the report. We're just going to get it up on the
21 screen here.

22 A Yeah.

23 Q Sorry, we'll get it up here just shortly. That's it.

24 Thank you. Apologies. Can you highlight -- or -- or enlarge
25 the top third of the page, value indication? Do you see that?

1 A Yes.

2 Q Did you prepare this?

3 A Yes, we did.

4 Q And did you --

5 A I did.

6 Q Did you authorize and approve this?

7 A Yes, I did.

8 Q Okay. What did you mean in the line that says sales
9 comparison approach \$18,500,000 to \$41,500,000?

10 A Those were -- those are two value conclusions that we
11 reached using the sales comparison approach.

12 Q All right. Now we've seen -- we've seen -- we've seen
13 references to the difference between \$43,000,000 flat and
14 43,300,000. Have you seen that?

15 A Yes.

16 Q Is it your testimony that the math ties the right way in
17 the body of the report?

18 A Yes.

19 Q And do you stand by that?

20 A Yes, I do.

21 Q And is there any error in your report associated with the
22 value range falling between 18,500,000 and \$43,000,000?

23 A No, sir.

24 MR. IRWIN: Okay. No further questions. I'm done,

25 nothing further.

1 THE COURT: Anything further?

2 MR. BRILLIANT: Your Honor, I would -- I would move
3 in debtor's Exhibit 466 as a demonstrative only.

4 THE COURT: And that is what, sir?

5 MR. BRILLIANT: That's the -- the report.

6 (City's Exhibit 466 was identified)

7 THE COURT: The report itself. Any objections?

8 MR. IRWIN: No objection.

9 THE COURT: All right. It is admitted.

10 (City's Exhibit 466 was admitted)

11 MR. BRILLIANT: No. No questions, Your Honor.

12 THE COURT: All right. When did you realize, sir,
13 that there was a mistake in your report?

14 A On the -- I realized there was a mistake in the report on
15 the flight over. When I was -- I read -- I was reading the
16 entire report on the flight and I saw this.

17 THE COURT: When -- when was that?

18 A That was Monday afternoon.

19 THE COURT: Oh, of this week?

20 A Yes, sir.

21 THE COURT: Too late to -- to arrange to have an
22 amended report filed?

23 A I brought that to counsel's attention and I left it at
24 their judgment. I -- I didn't really know how -- how else to
25 handle it.

1 THE COURT: Okay. All right. Sir, you may step
2 down. Thank you for coming today.

3 A Thank you.

4 (WITNESS JOHN SATTER WAS EXCUSED AT 3:46 P.M.)

5 THE COURT: Do we have any other business for today
6 anybody? Apparently not. Okay. So we're back in session on
7 the trial at 8:30 on September 29th. Yes. Okay. See you
8 then.

9 THE CLERK: All rise. Court is adjourned.

10 (Court Adjourned at 3:47 p.m.)
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We certify that the foregoing is a correct transcript from the
electronic sound recording of the proceedings in the
above-entitled matter.

/s/Deborah L. Kremlick, CER-4872
LaShonda Moss

Dated: 9-22-14